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**FINAL**  
**CITY COUNCIL**  
**CITY OF WICHITA**  
**KANSAS**

City Council Meeting  
09:00 a.m. November 17, 2009

City Council Chambers  
455 North Main

**OPENING OF REGULAR MEETING**

- Call to Order
- Invocation
- Pledge of Allegiance
- Approve the minutes of the regular meeting on November 3, 2009

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**AWARDS AND PROCLAMATIONS**

- Service Award:  
Mark Chairs

**I. PUBLIC AGENDA**

NOTICE: No action will be taken relative to items on this agenda other than referral for information. Requests to appear will be placed on a “first-come, first-served” basis. This portion of the meeting is limited to thirty minutes and shall be subject to a limitation of five minutes for each presentation with no extension of time permitted. No speaker shall be allowed to appear more frequently than once every fourth meeting. Members of the public desiring to present matters to the Council on the public agenda must submit a request in writing to the office of the city manager prior to twelve noon on the Tuesday preceding the council meeting. Matter pertaining to personnel, litigation and violations of laws and ordinances are excluded from the agenda. Rules of decorum as provided in this code will be observed.

None

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**COUNCIL BUSINESS**

**II. UNFINISHED COUNCIL BUSINESS**

1. Public Hearing on Lease of City-owned Building at 2408 East 21st Street to the Lord’s Diner. (District I)

RECOMMENDED ACTION: Close the public hearing; approve the negotiation of a lease agreement pursuant to the terms and conditions described above; and authorize all necessary signatures.

### **III. NEW COUNCIL BUSINESS**

1. **Public Hearing and Issuance of Taxable Industrial Revenue Bonds, Spirit AeroSystems, Inc.** (District III)

RECOMMENDED ACTION: Close the public hearing and approve first reading of the Bond Ordinance authorizing the execution and delivery of documents for the issuance of Taxable Industrial Revenue Bonds for Spirit AeroSystems, Inc. in an amount not-to-exceed \$17.5 million.

2. **Letter of Intent to issue Hospital Facilities Refunding Revenue Bonds, Via Christi Health System, Inc.**  
(District VI)

RECOMMENDED ACTION: Approve the Letter of Intent for Hospital Facilities Refunding Revenue Bonds for Via Christi in the amount not to exceed \$95,000,000 and approve the necessary signatures.

3. **Memorandum of Understanding between City of Wichita and Wichita Festivals, Inc. for 2010 River Festival.**

RECOMMENDED ACTION: Approve the memorandum of Understanding (MOU) between the City of Wichita (City) and Wichita Festivals, Inc., (WFI) and approve funding from Convention and Tourism Fund for the 2010 Wichita River Festival and make necessary budget adjustments.

4. **Vendor Selection-Fire Apparatus Replacement.**

***(PULLED PER CITY MANAGER)***

5. **47th Street South Improvement, between Lulu and Hydraulic.** (District III)

RECOMMENDED ACTION: Approve the project, approve the design agreement, place the ordinance on first reading and authorize the signing of State/Federal Agreements as required.

6. **Pump Station No. 11.** (District VI)

RECOMMENDED ACTION: Approve the budget increase, adopt the resolution, and authorize the necessary signatures.

7. **Downtown Parking Lot and Transit Info Signage Proposal.** (District I)

RECOMMENDED ACTION: Direct staff to develop a plan for additional downtown parking lot and transit informational signage to be integrated with the existing parking lot sign network using unobligated FTA capital funds.

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## **COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES**

### **PLANNING AGENDA**

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

#### **IV. NON-CONSENT PLANNING AGENDA (ITEMS 1 AND 2)**

1. ZON2009-00029 – Request City Zone Change from GO General to LC Limited Commercial, generally located south of 13th Street North and east of Cleveland Avenue, 1332 North Cleveland Avenue. (District I)

RECOMMENDED ACTION: 1) Concur with the findings of the MAPC and approve the zone change; place the ordinance on first reading; **OR** 2) Return the application to the MAPC for reconsideration; **OR** 3) Modify the request by the addition of a protective overlay as recommended by DAB I that prohibits liquor stores, offices that accept paychecks or car titles as security for loans and prohibits the sale of alcoholic liquor for consumption on premises.

(An override of the Planning Commission's recommendation requires a two-third majority vote of the City Council on the first hearing.)

2. PUD2009-00004 – City Planned Unit Development request from SF-5 Single-family Residential (“SF-5”) zoning to create PUD #32, The Lost Sock Planned Unit Development; generally located west of Hydraulic Street and 1/8 mile north of 55th Street South. (District III)

RECOMMENDED ACTION: 1) Adopt the findings of the MAPC and approve the PUD subject to platting within one year; place the ordinance on first reading; withhold publication of the ordinance until instructed by planning staff, following the recording of the plat; **OR** 2) Modify the request per the alternate recommendation of the DAB, approve the PUD subject to platting within one year; place the ordinance on first reading; withhold publication of the ordinance until instructed by planning staff, following the recording of the plat;(An override of the Planning Commission's recommendation requires a two-third majority vote of the City Council on the first hearing); **OR** 3)Return the application to the MAPC for reconsideration.

(An override of the Planning Commission's recommendation requires a two-third majority vote of the City Council on the first hearing.)

**V. CONSENT PLANNING AGENDA (ITEMS 1 THROUGH 3)**

1. \*ZON2009-00030 - City Zone Change from SF-5 Single-family Residential ("SF-5") to TF-3 Two-family Residential ("TF-3"); generally located north of Pawnee Avenue and west of Seneca Street. (District IV)

RECOMMENDED ACTION: 1) Adopt the findings of the MAPC and approve the zone change; place the ordinance establishing the zone change on first reading; **OR** 2) Return the application to the MAPC for reconsideration.

(An override of the Planning Commission's recommendation requires a two-thirds majority vote of the City Council on the first hearing.)

2. \*SUB 2009-61 -- Plat of Rental Sales Estate located on the east side of Seneca, south of 47th Street South. (District IV)

RECOMMENDED ACTION: Approve the plat and authorize the necessary signatures.

3. \*VAC2009-00034 - Request to vacate a portion of a platted setback; generally located on the southeast corner of Dugan Road and 36th Street South. (District IV)

RECOMMENDED ACTION: Approve the Vacation Order and authorize the necessary signatures.

**HOUSING AGENDA**

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

**VI. NON-CONSENT HOUSING AGENDA**

None

**VII. CONSENT HOUSING AGENDA**

None

**AIRPORT AGENDA**

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

**VIII. NON-CONSENT AIRPORT AGENDA**

None

**IX. CONSENT AIRPORT AGENDA**

None

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**COUNCIL AGENDA**

**X. COUNCIL MEMBER AGENDA**

None

**XI. COUNCIL MEMBER APPOINTMENTS**

1. Board Appointments.

RECOMMENDED ACTION: Approve the Appointments.

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**XII. CONSENT AGENDA (ITEMS 1 THROUGH 23A)**

1. Report of Board of Bids and Contracts dated November 16, 2009.

RECOMMENDED ACTION: Receive and file report; approve Contracts;  
authorize necessary signatures.

2. Applications for Licenses:

|                    |             |                   |
|--------------------|-------------|-------------------|
| <u>New</u>         | <u>2009</u> |                   |
| Ernest C Doyon Jr. | Vegas Video | 8323 West Kellogg |

RECOMMENDED ACTION: Approve the licenses.

3. Applications for Licenses to Retail Cereal Malt Beverages:

|                |                              |                                   |
|----------------|------------------------------|-----------------------------------|
| <u>New</u>     | <u>2009</u>                  | <u>(Consumption on Premises)</u>  |
| Mary T. Villar | Mary's Mexico Café           | 1930 South Oliver                 |
| <u>New</u>     | <u>2009</u>                  | <u>(Consumption off Premises)</u> |
| Stephanie Vo   | KD Shop                      | 10409 West Maple                  |
| <u>Renewal</u> | <u>2009</u>                  | <u>(Consumption off Premises)</u> |
| Doug Wald      | Presto #34                   | 1250 South Rock Road              |
| Doug Wald      | Presto #37                   | 1254 South Tyler                  |
| Doug Wald      | Presto #40                   | 4414 West Maple                   |
| Doug Wald      | Presto #41                   | 7136 West Central                 |
| Doug Wald      | Presto #42                   | 7990 East Central                 |
| Doug Wald      | Presto #43                   | 2001 South Oliver                 |
| Doug Wald      | Presto #44                   | 7236 West 21st Street             |
| Doug Wald      | Presto #45                   | 4821 South Broadway               |
| Doug Wald      | Presto #46                   | 515 North Seneca                  |
| Doug Wald      | Presto #47                   | 2356 South Seneca                 |
| Doug Wald      | Presto #32                   | 3311 North Rock Road              |
| Doug Wald      | Presto #33                   | 2190 North Rock Road              |
| Doug Wald      | Presto #48                   | 1350 North Oliver                 |
| Yehia A Robert | YMR Group Inc dba C& C Store | 1131 East 47th Street South       |

RECOMMENDED ACTION: Approve licenses subject to Staff review and approval.

4. Preliminary Estimates:

- a. Preliminary Estimates. (See Attached)

RECOMMENDED ACTION: Receive and file.

5. Statement of Costs:

- a. Statements of Costs.

RECOMMENDED ACTION: Approve and file.

6. Consideration of Street Closures/Uses.

- a. A Night with Santa. (Districts I and VI)

RECOMMENDED ACTION: Approve street closure.

7. Agreements/Contracts:

- a. Remediation of 149 and 157 South Washington for the Gilbert and Mosley Site. (District III)  
b. W.A.T.E.R. Center Exhibits. (District III)  
c. Supplemental Agreement No. 1 for the inspection of Special Transportation Structures.

RECOMMENDED ACTION: Approve Agreements/Contracts; authorize the necessary signatures.

8. Change Orders:

- a. Water Treatment Plant Residuals Project, Pipeline B.

RECOMMENDED ACTION: Approve the Change Orders and authorize the necessary signatures.

9. Property Acquisitions:

- a. Partial Acquisition of land in the Southwest Quarter of the Northeast Quarter of Section 17, Township 25 South, Range 1 West of the 6th Principal Meridian for the Integrated Local Water Supply Plan, (Harvey County).
- b. Partial Acquisition of 12433 East Harry for the Harry: Greenwich to 127th Street East Road Improvement Project. (District II)
- c. Partial Acquisition of land in the West Half of the Northwest Quarter of Section 5, Township 24 South, Range 2 West of the 6th Principal Meridian for the Integrated Local Water Supply Plan, (Harvey County).
- d. Partial Acquisition of land in the Northeast Quarter of Section 11, Township 24 South, Range 3 West of the 6th Principal Meridian for the Integrated Local Water Supply Plan, (Harvey County).
- e. Partial Acquisition of land in the Southwest Quarter of Section 16, Township 24 South, Range 2 West of the 6th Principal Meridian for the Integrated Local Water Supply Plan, (Harvey County).
- f. Partial Acquisition of 1510 South Greenwich for the Greenwich: Harry to Kellogg Improvement Project. (District II)

RECOMMENDED ACTION: Approve budgets and Contracts; authorize necessary signatures.

10. Minutes of Advisory Boards/Commissions

Wichita Board of Appeals of Refrigeration, Air-Conditioning, Warm Air Heating and Boiler, September 24th, 2009

Wichita Transit Advisory Board, October 9, 2009

Board of Park Commissioners, September 19, 2009

Board of Park Commissioners, August 10, 2009

Board of Park Commissioners, July 13, 2009

Board of Park Commissioners, June 8, 2009

Board of Park Commissioners, May 11, 2009

Board of Park Commissioners, April, 18 2009

Board of Park Commissioners, March 9, 2009

Board of Park Commissioners, February 9, 2009

Board of Park Commissioners, January 12, 2009

Board of Park Commissioners, December 1, 2008

Board of Park Commissioners, November 10, 2008

Board of Park Commissioners, October 20, 2008

Board of Park Commissioners, September 20, 2008

Wichita Employees' Retirement, July, 15 2009

Wichita Employees' Retirement, August 26, 2009

Wichita Employees' Retirement, September 16, 2009

Deferred Compensation Board of Trustees, May 21, 2009

Deferred Compensation Board of Trustees, July 14, 2009

Police and Fire Retirement System, July 22, 2009

RECOMMENDED ACTION: Receive and file.

11. Sale of Land on 21st Street North, East of Grove. (District I)

RECOMMENDED ACTION: Approve the Real Estate Purchase Contract and authorize all necessary signatures.

12. Resolution of Support for Application for Housing Tax Credits; Sunflower/Regal Plaza Senior Residences Housing Project. (District I)

RECOMMENDED ACTION: Adopt the resolution of support and authorize the necessary signatures.

13. Budget Adjustment - Grant Matches.

RECOMMENDED ACTION: Approve the budget adjustment and authorize the transfer in a not-to-exceed amount of \$450,000 from under-expenditures within the Transit fund.

14. HOME CHDO Operating Support Funding. (Districts I, III, IV, V, and VI)

RECOMMENDED ACTION: Approve the recommended allocations and the funding agreements and authorize the necessary signatures.

15. Amendment to Metropolitan Transportation Plan 2035 Consultant Contract.

RECOMMENDED ACTION: Authorize the necessary signatures to execute the amended contract to complete the Metropolitan Transportation Plan 2035 as the fiscal agent for the Wichita Area Metropolitan Planning Organization.

16. October 2009 Monthly Contracts and Agreements Report to Council.

RECOMMENDED ACTION: Receive and file.

17. Senior Management Expenses for August 2009.

RECOMMENDED ACTION: Receive and file.

18. Senior Management Expenses for September 2009.

RECOMMENDED ACTION: Receive and file.

19. Weapons Destruction.

RECOMMENDED ACTION: Receive and file the list of weapons.



20. Naming of Chapin Park. (District III)

RECOMMENDED ACTION: Approve naming the area located at 3800 South Hydraulic, Chapin Park.

21. River District Redevelopment Project Budget Adjustments.

RECOMMENDED ACTION: Adopt the resolution amending prior bonding resolutions authorizing the use of General Obligation and Special Obligation STAR Bond financing for the River District Redevelopment Project.

22. Settlement of Isley v. City of Wichita.

RECOMMENDED ACTION: Approve the terms of the settlement and payment from the Tort sub-fund together with any necessary budget adjustments.

23. Second Reading Ordinances: (First Read November 3, 2009)

- a. List of Second Reading Ordinances. (See Attached)

RECOMMENDED ACTION: Adopt the Ordinances.

Adjournment

**CITY OF WICHITA**  
**City Council Meeting**  
November 17, 2009

**TO:** Mayor and City Council Members

**SUBJECT:** Public Hearing on Lease of City-owned Building at 2408 East 21<sup>st</sup> Street to the Lord's Diner (District I)

**INITIATED BY:** Office of Property Management

**AGENDA:** Unfinished Business

---

**Recommendation:** Close the public hearing and approve negotiation of a lease per the approved terms and conditions.

**Background:** The City-owned facility at 2408 East 21<sup>st</sup> Street North consists of an 18,414 square foot, single-story masonry structure on a 78,370 square foot site. As currently configured, the building has significant central open space with offices/classrooms along the north and south walls. The east portion of the building is currently unfinished. The City acquired and renovated the property in 1992. It was then leased to the Boys and Girls Club until they moved to their new facility on Opportunity Drive in July 2007. The building has been empty since vacated by the Boys and Girls Club.

The City used Community Development Block Grant (CDBG) funds for the acquisition. A requirement of CDBG funding is that the public must be notified of any change in use and public comments must be solicited. The City Council took action on October 20, 2009 to set a public hearing for November 17, 2009.

**Analysis:** The property was appraised in its current condition at \$150,000; however, this building needs significant maintenance. The roof on the east section of the building needs to be replaced and the parking lot needs to be resurfaced. Additionally, there are other items of deferred maintenance with both the interior and exterior of the building.

The Lord's Diner at its current location at Broadway and Central provides an evening meal seven days a week, 365 days a year for those in need of a nutritious meal. This organization has approached the City regarding the use of the Boys and Girls Club for a similar function.

The Lord's Diner has offered to lease the building from the City with an option to purchase. The proposed lease calls for a three year term with annual rent of \$15,000. The tenant would be responsible for all repairs and deferred maintenance along with all costs of operating the facility. The renovation and repair must be compatible with other redevelopment along the 21<sup>st</sup> Street corridor. The tenant would have the option to purchase the building at any time for \$150,000 less any rent payments to date.

As a condition of the lease, it is recommended that the Lord's Diner work with other agencies to provide economic and life skills services to the clientele of the facility. In addition to providing an evening meal, the tenant and/or partnering agencies would provide financial counseling, job placement services, utility assistance, and other services to improve the economic well being and life skills of the area residents. Such services would result in a comprehensive approach to addressing the needs of families and individuals in the area.

**Financial Considerations:** The City will receive lease revenue and possibly sale proceeds from this transaction. These proceeds will return to the CDBG program as program income to be reprogrammed for other projects. In addition, the City will be relieved of the costs of maintenance on this facility.

**Goal Impact:** This lease supports efficient infrastructure by maximizing the utilization of a City-owned asset and also supports quality of life by providing a location for an organization meeting a variety of public needs.

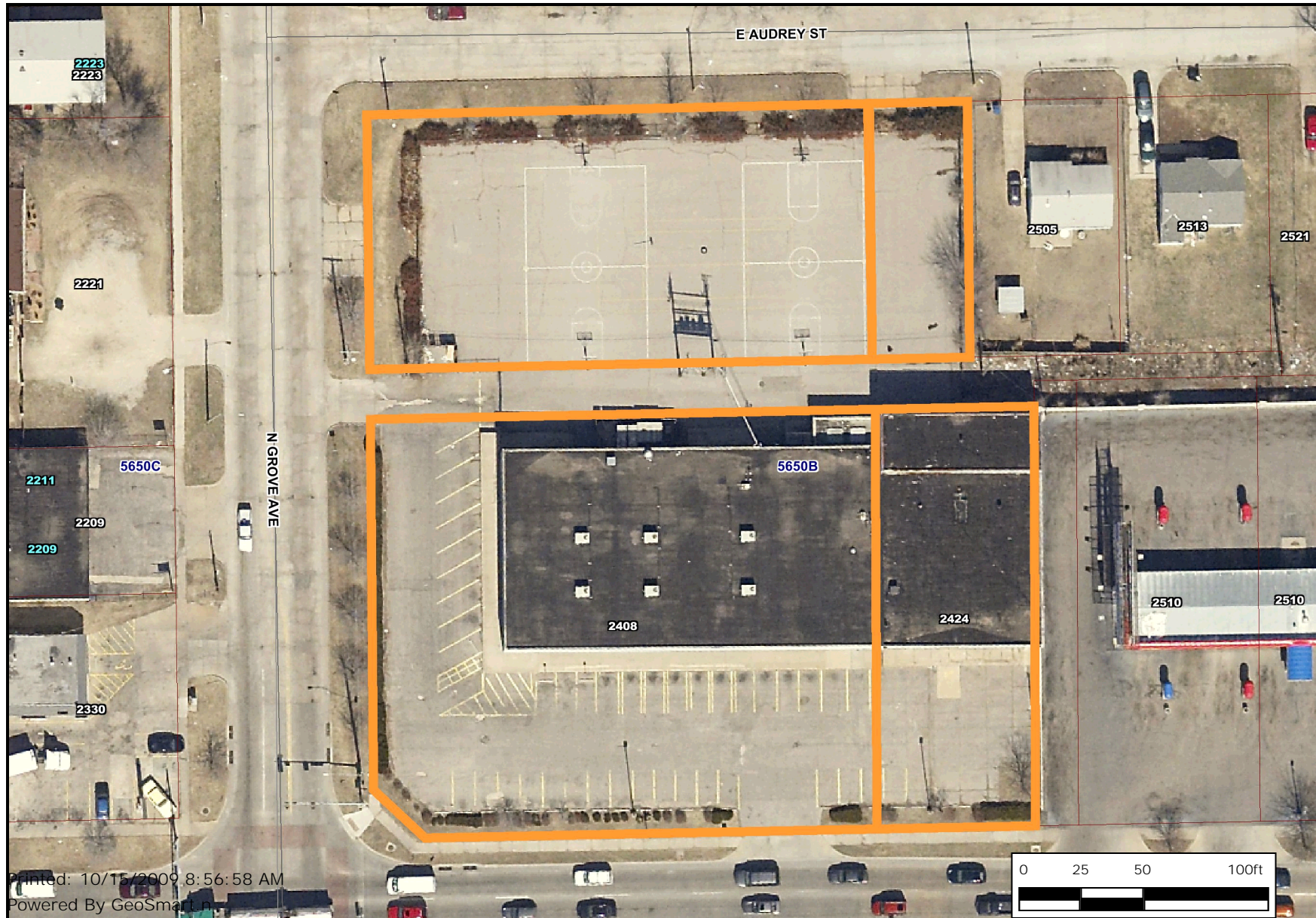
**Legal Considerations:** The lease agreement will be reviewed by Legal as to form.

**Recommendation/Action:** It is recommended that the City Council; 1) Close the public hearing; 2) approve the negotiation of a lease agreement pursuant to the terms and conditions described above; and 3) authorize all necessary signatures.

**Attachments:** Aerial.



# 2408 East 21st Street North



Identified Features

Selected Features

Old Town

Property Parcels

Roads

State Highway

US Federal Highway

Interstate

KTA

Arterial

Collector

Minor

Ramp

Railroads

Quarter Section

Waterways

Streams

Parks

Airports

SDERASTER.S-DEDATA.ORTH-01FT

SDERASTER.S-DEDATA.ORTH-0

City Limits

Andale

Bel Aire

Bentley

Cheney

Clearwater

Colwich

Derby

Eastborough

Garden Plain

Goddard

Haysville

Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.

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**City of Wichita  
City Council Meeting  
November 17, 2009**

**TO:** Mayor and City Council

**SUBJECT:** Public Hearing and Issuance of Taxable Industrial Revenue Bonds  
(Spirit AeroSystems, Inc.) (District III)

**INITIATED BY:** Office of Urban Development

**AGENDA:** New Business

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**Recommendations:** Place bond ordinance on first reading.

**Background:** On May 17, 2005, the City Council approved a five-year letter of intent for issuance of up to \$1 billion in Industrial Revenue Bonds to finance facilities for the benefit of Mid-Western Aircraft Systems, Inc. (now Spirit AeroSystems, Inc. “Spirit”), at 3801 South Oliver in southeast Wichita. The May 17th action also included support for a ten-year period of property tax abatement and authorization for City staff to apply for sales tax exemption on the acquisition of the financed assets, all subject to the incentive recapture provisions of the City’s current public incentives policy. The first \$80 million in bonds authorized under the letter of intent issued in December 2005, and an additional \$252 million series issued in December 2006. In 2008, Council approved issuance of \$30 million. Spirit now requests the issuance of an additional series of bonds in the aggregate principal amount of \$17.5 million.

**Analysis:** Bond proceeds will be used to finance the ongoing modernization and expansion of the commercial aircraft manufacturing facilities Spirit acquired from The Boeing Company in June of 2005. Ongoing modernization and expansion of the facilities will enable Spirit AeroSystems, Inc. to continue existing commercial aircraft part production programs and services, to take advantage of new technology and to compete for new aircraft part manufacturing business. Spirit is continuing to manufacture major parts systems for a variety of Boeing jetliners, including the Boeing 787. In addition, Spirit has expanded its operations and customer base by winning work for other makers of commercial aircraft, as well as corporate and military aircraft.

Spirit AeroSystems, Inc. intends to purchase the bonds itself, through direct placement, and the bonds will not be reoffered for sale to the public. Kutak Rock LLP of Omaha, Nebraska, engaged by Spirit, will serve as Bond Counsel in the transaction. Spirit has agreed to comply with all conditions of the letter of intent.

**Financial Considerations:** Spirit agrees to pay all costs of issuing the bonds and agrees to pay the City's \$2,500 annual IRB administrative fee for the term of the bonds. The bond financed property will be eligible for sales tax exemption and property tax exemption for a term of ten years, subject to fulfillment of the conditions of the City’s public incentives policy.

Under the City of Wichita/Sedgwick County Economic Development Incentives Policy, Mid-Western qualified for 100% property tax abatement for an initial five year period on all bond-financed real and personal property, plus a second five years for real property only. However, Mid-Western is requesting full ten-year abatement for both real and personal property. These same terms were afforded Boeing and accordingly were used by Onex in evaluating the financial feasibility of purchasing the Wichita facilities. Mid-Western agreed to comply with all other standard letter of intent conditions. These conditions and agreements have carried through to Spirit.

Wichita State University Center for Economic Development and Business Research performed a cost-benefit analysis using the Derby school district. The resulting benefit-cost ratios are:

|                 |             |
|-----------------|-------------|
| City of Wichita | 1.79 to one |
| Sedgwick County | 1.47 to one |
| U.S.D. 260      | 1.21 to one |
| State of Kansas | 3.12 to one |

**Goal Impact:** Economic Vitality and Affordable Living. Granting an ad valorem property tax exemption will encourage the business to create new job opportunities and stimulate economic growth for the City of Wichita and Sedgwick County.

**Legal Considerations:** The City Attorney's Office has reviewed and approved the Ordinance as to form and will review and approve all final documents prior to issuance of the bonds.

**Recommendations/Actions:** It is recommended that City Council close the public hearing and approve first reading of the Bond Ordinance authorizing the execution and delivery of documents for the issuance of Taxable Industrial Revenue Bonds for Spirit AeroSystems, Inc. in an amount not-to-exceed \$17.5 million.

**Attachment:** Bond Ordinance

**ORDINANCE NO. 48-563**

**AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT BETWEEN SPIRIT AEROSYSTEMS, INC. AND THE CITY OF WICHITA, KANSAS; APPROVING AND AUTHORIZING THE EXECUTION OF AN INDENTURE OF TRUST BETWEEN SAID CITY AND THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.; PLEDGING CERTAIN PAYMENTS UNDER SAID LEASE AGREEMENT AND MONEYS AND SECURITIES HELD BY THE TRUSTEE UNDER THE TERMS OF SAID INDENTURE OF TRUST; AUTHORIZING AND DIRECTING THE ISSUANCE OF INDUSTRIAL REVENUE BONDS SERIES VI, 2009 (SPIRIT AEROSYSTEMS, INC. PROJECT) OF SAID CITY IN THE PRINCIPAL AMOUNT OF \$17,500,000 FOR THE PURPOSE OF PROVIDING FUNDS FOR THE ACQUISITION, CONSTRUCTION, RECONSTRUCTION AND IMPROVEMENT OF CERTAIN INDUSTRIAL AND MANUFACTURING FACILITIES OF SPIRIT AEROSYSTEMS, INC., A DELAWARE CORPORATION, IN SEDGWICK COUNTY, KANSAS; DESIGNATING THE TRUSTEE AND THE PAYING AGENT FOR SAID BONDS; AUTHORIZING THE SALE OF SAID BONDS AND THE EXECUTION OF A BOND PURCHASE AGREEMENT THEREFOR; APPROVING AND AUTHORIZING THE EXECUTION OF AN ADMINISTRATIVE SERVICE FEE AGREEMENT; AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN RELATED INSTRUMENTS;**

WHEREAS, the City of Wichita, Kansas (the "City") desires to promote and stimulate general economic welfare and prosperity and provide greater employment opportunities within the City and its environs and thereby to further promote, stimulate and develop the economic welfare and prosperity of the State of Kansas; and

WHEREAS, pursuant to the provisions of K.S.A. 12-1740 et seq., as amended, said City is authorized to issue industrial revenue bonds of said City, and it is hereby found and determined to be advisable and in the interest and for the welfare of the City and its inhabitants that industrial revenue bonds be issued for the purpose of providing funds for the acquisition, construction, reconstruction and improvement of certain industrial and manufacturing facilities of Spirit AeroSystems, Inc., a Delaware corporation (the "Company"), located within the environs of the City in Sedgwick County, Kansas, which facilities include the Project as defined in the Lease Agreement and the Indenture of Trust herein referred to approved and authorized; and

WHEREAS, the Company will acquire a leasehold interest in the Project from the City pursuant to said Lease Agreement; and

WHEREAS, by Letter of Intent dated May 17, 2005, the City has authorized the undertaking of an industrial revenue bond financing for the Project; and

WHEREAS, said Indenture of Trust and this Ordinance provide for the authorization and issuance of a series of such bonds;

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

**Section 1. Enabling Declaration.** The City Council, as governing body of the City of Wichita, Kansas, has determined and hereby declares that the Project, if in being, would promote the welfare of the City.

**Section 2. Approval and Authorization of Lease Agreement.** The Lease Agreement, to be dated as of December 1, 2009, between the City, as lessor, and the Company, as lessee (the "Lease"), be and the same is in all respects hereby approved, authorized and confirmed, and Jim Skelton (or in his absence, the next person in order of succession pursuant to the Order of Succession Resolution of the City), as Vice Mayor, and the City Clerk or Deputy City Clerk be and they are hereby authorized and directed to execute, attest and deliver the Lease for and on behalf of the City.

**Section 3. Approval and Authorization of Indenture of Trust, Designation of Trustee and Paying Agent.** The Indenture of Trust, to be dated as of December 1, 2009 (the "Indenture"), between the City and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), be and the same is in all respects hereby approved, authorized and confirmed, and said Trustee is hereby designated to act as such thereunder, and the Trustee is hereby designated to act as Paying Agent for the \$17,500,000 principal amount of City of Wichita, Kansas Industrial Revenue Bonds Series VI, 2009 (Spirit AeroSystems, Inc. Project), authorized by this Ordinance and the Indenture and Jim Skelton (or in his absence, the next person in order of succession pursuant to the Order of Succession Resolution of the City), as Vice Mayor, and the City Clerk or Deputy City Clerk be and they are hereby authorized and directed to execute, attest and deliver the Indenture for and on behalf of said City. As provided in the Indenture, the City assigns and pledges to the Trustee certain payments under the Lease and moneys and securities held by the Trustee under the terms of the Indenture as security for such Bonds.

**Section 4. Approval, Authorization and Issuance of Bonds.** There is hereby created and established an issue of bonds of the City to be known and designated as "City of Wichita, Kansas Industrial Revenue Bonds Series VI, 2009 (Spirit AeroSystems, Inc. Project)" (the "Bonds"), which shall consist of \$17,500,000 principal amount of Bonds, to be dated as of their date of first authentication and delivery, to mature on January 1, 2020, to bear interest at the rate of 8.00% per annum, payable semiannually on January 1 and July 1 in each year, commencing July 1, 2010, and to be subject to redemption at the principal amount thereof plus accrued interest thereon to the redemption date as further provided in the Indenture and shall be in form and content and include such other details as specified herein and in the Indenture. The issuance of the Bonds is in all respects hereby approved, authorized and confirmed, and Jim Skelton (or in his absence, the next person in order of succession pursuant to the Order of Succession



Resolution of the City), as Vice Mayor, and the City Clerk or Deputy City Clerk are authorized and directed to execute and seal the Bonds pursuant to the Indenture, and the Trustee is hereby authorized and directed to authenticate the Bonds, to deliver the same to the purchaser designated in the Bond Purchase Agreement hereinafter referred to for and on behalf of the City upon receipt of the purchase price therefor and to deposit the proceeds thereof with itself as trustee, in the manner provided for by this Ordinance and the Indenture. The Bonds, together with the interest thereon, are not general obligations of the City, but are special obligations payable (except to the extent paid out of moneys attributable to the proceeds derived from the sale of the Bonds or to the income from the temporary investment thereof) solely from the lease payments under the Lease, and the Bond Fund and other moneys held by the Trustee, as provided in the Indenture. Neither the credit nor the taxing power of the State of Kansas or of any political subdivision of such State is pledged to the payment of the principal of the Bonds and premium, if any, and interest thereon or other costs incident thereto.

**Section 5. Authorization of the Sale of the Bonds.** The sale of the Bonds pursuant to the terms of the Bond Purchase Agreement, at a purchase price of 100% of the principal amount thereof plus accrued interest from the date of authentication to the date of delivery of and payment for the Bonds, is hereby approved, authorized and confirmed. Jim Skelton (or in his absence, the next person in order of succession pursuant to the Order of Succession Resolution of the City), as Vice Mayor, is hereby authorized and directed to execute the Bond Purchase Agreement, dated as of December 1, 2009, covering the sale of the Bonds.

**Section 6. Approval and Authorization of Administrative Service Fee Agreement.** The Administrative Service Fee Agreement, to be dated as of December 1, 2009, between the City and the Company, (the "Fee Agreement"), be and the same is in all respects hereby approved, authorized and confirmed, and Jim Skelton (or in his absence, the next person in order of succession pursuant to the Order of Succession Resolution of the City), as Vice Mayor, and the City Clerk or Deputy City Clerk be and they are hereby authorized and directed to execute and deliver the Fee Agreement, for and on behalf of the City.

**Section 7. Authority To Correct Errors, Etc.** Jim Skelton (or in his absence, the next person in order of succession pursuant to the Order of Succession Resolution of the City), as Vice Mayor, the City Clerk and Deputy City Clerk are hereby authorized and directed to make any alterations, changes or additions in the instruments herein approved, authorized and confirmed necessary to correct errors or omissions therein or to conform the same to the other provisions of said instruments or to the provisions of this Ordinance.

**Section 8. Severability.** If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance. It shall not be necessary for the Lease, the Indenture, the Fee Agreement or the Bond Purchase Agreement to be published in the official City paper, but all such documents shall be on file in the office of the City Clerk and shall be available for inspection by any interested party.

**Section 9. Further Authority.** Jim Skelton (or in his absence, the next person in order of succession pursuant to the Order of Succession Resolution of the City), as Vice Mayor, the City Clerk, Deputy City Clerk, City Treasurer, City Attorney and other City officials are hereby

authorized to execute and deliver for and on behalf of the City any and all additional certificates, documents or other papers and to perform all other acts as they may deem necessary or appropriate in order to implement and carry out the matters herein authorized.

**Section 10. Effective Date.** This Ordinance shall take effect and be in force from and after its passage and publication in the official City paper.

PASSED by the City Council this 24 day of November, 2009.

Signed by the \_\_\_\_\_.

\_\_\_\_\_  
Jim Skelton  
Vice Mayor

Attest:

\_\_\_\_\_  
City Clerk

[SEAL]

Approved as to Form:

\_\_\_\_\_  
Gary E. Rebenstorf  
City Attorney

City of Wichita  
City Council Meeting  
November 17, 2009

**TO:** Mayor and City Council

**SUBJECT:** Letter of Intent to Issue Hospital Facilities Refunding Revenue Bonds  
(Via Christi Health System, Inc.) (District VI)

**INITIATED BY:** Office of Urban Development

**AGENDA:** New Business

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**Recommendation:** Approve the letter of intent and engagement of bond counsel.

**Background:** On October 26, 1999, the City Council approved the issuance of Hospital Facilities Improvement and Refunding Revenue Bonds for Via Christi Health System, Inc. in the amount of \$102,660,000. The bond proceeds were used to refinance prior bonds that had been issued by the City to finance St. Joseph Hospital in 1985 and 1991 and to retire a bank loan payable by the Rehabilitation Center, as part of the consolidation of the then new Via Christi Health System. Proceeds were also used to finance certain new improvements at Via Christi Medical Center.

The 1999 Bonds may be called for redemption anytime after November 15, 2009 and Via Christi has requested a letter of intent to issue refunding revenue bonds in an amount not-to-exceed \$95,000,000 to refinance the 1999 Bonds at a lower interest rate.

**Analysis:** Via Christi Health System, Inc. was formed in 1995 through the consolidation of the St. Francis Ministry Corporation of the Sisters of Sorrowful Mothers and the CSJ Health System of Wichita of the Sisters of St. Joseph of Wichita. During that same period, St. Francis Regional Medical Center and St. Joseph Medical Center were consolidated to form Via Christi Regional Medical Center. Via Christi Health System headquarters is located in Wichita at 929 N. St. Francis. Via Christi Health System, Inc. operates and manages five hospitals on six campuses, a rehabilitation center, five senior care facilities and 18 physician practices in three states.

Bond proceeds will be used to refund all outstanding bonds issued by the City as its Series XI 1999 Hospital Facilities Improvement and Refunding Revenue Bonds. The 1999 Bonds are currently redeemable at a price equal to 101% of the principal amount of bonds being redeemed, plus accrued interest to the date of redemption.

An analysis of the uses of project funds is:

**USES OF FUNDS**

|                                                    |                  |
|----------------------------------------------------|------------------|
| Redemption of the 1999 Refunded Bonds              | 89,861,692       |
| Original Issue Discount (if any, shall not exceed) | 3,543,658        |
| Cost of Issuance                                   | <u>1,594,650</u> |
| Total Cost of Project:                             | \$95,000,000     |

**Financial Considerations:** Via Christi agrees to pay all costs of issuing the bonds and agrees to pay the City's \$2,500 annual IRB administrative fee for the term of the bonds. The investment firm of Morgan Stanley will serve as underwriter of the bonds.

**Goal Impact:** Economic Vitality and Affordable Living. Providing tax-exempt financing to not-for-profit health care providers ensures continued high-quality care for residents and visitors and provides opportunities for high-quality job creation.

**Legal Considerations:** The law firm of Triplett, Woolf & Garretson, LLC will serve as bond counsel in the transaction. This firm served as bond counsel in the issuance of City of Wichita Health Care Facilities Refunding and Improvement Revenue Bonds that financed Via Christi's new acute care hospital at 151<sup>st</sup> Street West and 21<sup>st</sup> Street North in September 2009. Via Christi has requested that the City retain Triplett Woolf for this transaction, which also includes the same underwriter. The City Attorney's Office will review and approve the form of bond documents prior to the issuance of any bonds. Via Christi agrees to comply with the Standard Conditions contained in the City's IRB Policy.

**Recommendations/Actions:** It is recommended that the City Council approve the Letter of Intent for Hospital Facilities Refunding Revenue Bonds for Via Christi in the amount not to exceed \$95,000,000 and approve the necessary signatures.

**Attachments:** Letter of Intent Application



**Via Christi**  
Health System

3720 E. Bayley  
Wichita, KS 67218

Tel 316-858-4935  
Fax 316-858-4187

Health System  
Finance Department

November 5, 2009

CITY OF WICHITA, KANSAS  
Attn: Mayor and Members of the City Council  
455 N. Main – City Hall  
Wichita, Kansas 67202

*Re: Proposed City of Wichita, Kansas  
Health Care Facilities Refunding Revenue Bonds, Series 2009  
(Via Christi Health System, Inc.) (the "Bonds")*

Dear Mayor Brewer and Council Members:

This letter is a request of Via Christi Health System, Inc. (the "Applicant") for approval by the governing body of the City of Wichita, Kansas (the "City") of a Letter of Intent to issue its Hospital Facilities Refunding Revenue Bonds in an amount estimated at \$88,395,000 but not to exceed \$95,000,000 (the "Bonds"). The proceeds of the proposed Bonds will be used for the purpose of providing funds to refund the outstanding City of Wichita, Kansas, Hospital Facilities Improvement and Refunding Bonds, Series XI, 1999 (Via Christi Health System, Inc.) and issued in the original aggregate principal amount of \$102,660,000 (the "1999 Refunded Bonds") and pay certain costs of issuance associated with the Bonds. The 1999 Refunded Bonds were previously issued for the purpose of providing funds to (i) refund certain other previously issued bonds, (ii) pay the costs of acquiring certain existing rehabilitation hospital facilities known as Our Lady of Lourdes, and (iii) acquire, construct and equip certain improvements to existing hospital facilities at the Via Christi – St. Francis Campus, the Via Christi – St. Joseph Campus, and the Mt. Carmel Regional Medical Center, (all hospital facilities referred to herein as the "Facilities"), all on behalf of Via Christi Regional Medical Center, Inc., Via Christi Rehabilitation Center, Inc. and Mt. Carmel Regional Medical Center, Inc. (collectively, the "Hospitals"). The City will continue to lease the Facilities and sublease them to the Hospitals. The Applicant intends to guarantee the payment of the principal of, premium, if any, and interest on the Bonds.

The 1999 Refunded Bonds are currently outstanding on a parity with the Issuer's (i) Hospital Facilities Revenue Bonds, Series III, 2001 (Via Christi Health System, Inc.) (the "2001 Bonds") and (ii) Hospital Facilities Refunding and Improvement Revenue Bonds, Series III-A, 2009 (Via Christi Health System, Inc.), Hospital Facilities Variable Rate Revenue Bonds, Series III-B-1, 2009 (Via Christi Health System, Inc.), and Hospital Facilities Variable Rate Revenue Bonds, Series III-B-2, 2009 (Via Christi Health System, Inc.) (collectively, the "2009 Bonds"). The proposed Bonds would also be issued on a parity with the 2001 Bonds and the 2009 Bonds. The proposed refunding of the 1999 Refunded Bonds is intended to capture the current favorable interest rate environment which will result in significant interest savings to Via Christi. It is not anticipated that the proposed refunding will extend the life of the financing.

1. Name and Address of Applicant.

Via Christi Health System, Inc.  
8200 E. Thorn Dr.  
Wichita, Kansas 67226  
Telephone: (316) 858-4933  
Attention: David R. Hadley, Senior Vice President & Chief Financial Officer

2. A General Description of the Nature of the Business of the Proposed Beneficiaries.

Via Christi Health System, Inc. (“Via Christi”) is the parent corporation of a network of regional providers of not-for-profit health care services, including acute care, senior care and rehabilitative services provided by subsidiaries and affiliates throughout Kansas, including, but not limited to, Via Christi Regional Medical Center, Inc. (St. Francis and St. Joseph Campuses), Wichita, Kansas, Via Christi Rehabilitation Center, Inc., Wichita, Kansas and Mt. Carmel Medical Center, Inc., Pittsburg, Kansas. Via Christi, Via Christi Regional Medical Center, Inc., Via Christi Rehabilitation Center, Inc. and Mt. Carmel Medical Center, Inc. (the “Obligated Group”) will bear all obligations under the proposed Bonds. The Applicant currently has subsidiary health care operations in Oklahoma and throughout Kansas. The Applicant is a not-for-profit corporation co-sponsored by Marian Health System and Ascension Health. For more information about the current operations of Applicant, see its annual report for fiscal year ended September 30, 2008 provided herewith.

3. Key Officers and Employees of Proposed Beneficiaries.

The Board of Trustees of the Applicant presently consists of thirteen (13) voting members and one *ex officio* member. Their names, occupation, and expiration dates of their terms are as follows:

| <b>NAME</b>                                 | <b>OCCUPATION / ADDRESS</b>                                                                          | <b>Term Expires<br/>(09/30)</b> |
|---------------------------------------------|------------------------------------------------------------------------------------------------------|---------------------------------|
| Gerald (Jerry) T. Aaron                     | Retired – Attorney<br>Wichita, Kansas                                                                | 2016                            |
| Kevin P. Conlin                             | President & CEO<br>Via Christi Health System, Inc.<br>Wichita, Kansas                                | <i>Ex Officio</i>               |
| Sister M. Therese Gottschalk,<br>SSM        | President, Marian Health System<br>President/CEO, St. John Health System<br>Tulsa, Oklahoma          | 2010                            |
| Rev. Msgr. Robert E. Hemberger              | Vicar General<br>Catholic Diocese of Wichita<br>Wichita, Kansas                                      | 2012                            |
| Sister Sherri Marie Kuhn, SSM,<br>Secretary | Senior Vice President, Mission Integration<br>Via Christi Regional Medical Center<br>Wichita, Kansas | 2010                            |
| Sister M. Martin (Marty)<br>McEntee, CSJ    | Congregation of St. Joseph<br>Kokomo, Indiana                                                        | 2016                            |
| Tony Isaac                                  | President – LodgeWorks<br>Wichita, Kansas                                                            | 2012                            |
| Sister Lois Ann O’Malley, CSJ               | Spanish Teacher – KSU<br>Sisters of St. Joseph of Wichita<br>Manhattan, Kansas                       | 2012                            |
| James C. Patton                             | Retired – Partner Ernst & Young<br>Indianapolis, Indiana                                             | 2018                            |
| Jon D. Rahman, M.D.                         | System Vice President/Chief Medical Officer<br>St. Vincent Health, Indianapolis, Indiana             | 2016                            |
| Sister M. Jeanine Retzer, SSM               | Assistant Provincial, U.S./Caribbean Province<br>Sisters of the Sorrowful Mother, Oshkosh, WI        | 2017                            |
| David L. Strohm, Chairman                   | President<br>TrueNorth Inc., Wichita, Kansas                                                         | 2012                            |

| NAME                                | OCCUPATION / ADDRESS                                    | Term Expires<br>(09/30) |
|-------------------------------------|---------------------------------------------------------|-------------------------|
| Anthony R. Tersigni, Ed.D,<br>FACHE | President & CEO<br>Ascension Health, St Louis, Missouri | 2016                    |
| Donald A. Wilson                    | Healthcare Consultant<br>Topeka, Kansas 66610-1411      | 2016                    |

Key officers and employees of the Applicant include the following:

*VIA CHRISTI HEALTH SYSTEM, INC.*

Kevin P. Conlin, President and Chief Executive Officer  
David R. Hadley, Sr. Vice President and Chief Financial Officer

Key officers and employees of the Applicant's subsidiary/affiliate members of the Obligated Group include the following:

*VIA CHRISTI REGIONAL MEDICAL CENTER, INC.*

Michalene Maringer, President and Chief Executive Officer

*MT. CARMEL REGIONAL MEDICAL CENTER, INC.*

Randy Peterson, Via Christi Health System, Inc., Senior Vice President – Regional Operations

*VIA CHRISTI REHABILITATION CENTER, INC.*

Cindy LaFleur, Administrator

4. A General Description of the Facilities and their Specific Location.

The 1999 Refunded Bonds were issued to provide funds used to (i) refund certain other previously issued bonds, (ii) pay the costs of acquiring the rehabilitation hospital facilities known as Our Lady of Lourdes, and (iii) acquire, construct and equip certain improvements to existing hospital facilities at the Via Christi – St. Francis Campus, the Via Christi – St. Joseph Campus, and the Mt. Carmel Medical Center, all on behalf of the Hospitals. The Hospitals have continually subleased and managed the Facilities since before the issuance of the 1999 Refunded Bonds. The City would continue to lease the Facilities and sublease them to the Hospitals.

5. The Dollar Amount of the Bonds Requested.

The total principal amount of the Bonds requested is estimated at \$88,395,000 and would not exceed \$95,000,000.

6. A Detailed Breakdown of the Estimated Costs.

It is anticipated that the proceeds from the sale of the proposed Bonds will be applied substantially as follows:

|                                                                |                     |
|----------------------------------------------------------------|---------------------|
| Redemption of the 1999 Refunded Bonds                          | \$89,861,692        |
| Original Issue Discount (if any, shall not exceed this amount) | \$ 3,543,658        |
| Costs of Issuance                                              | \$ 1,594,650        |
| <b>TOTAL</b>                                                   | <b>\$95,000,000</b> |

The Original Issue Discount projection has been provided in an abundance of caution. It is actually anticipated that the Bonds will be sold at a premium, thus, reducing the par amount of Bonds issued. The current best estimate for the principal amount of the proposed Bonds is \$88,395,000.

7. Name and Address of Proposed Counsel to be Utilized In Connection with the Issuance of the Bonds.

City's Bond Counsel

Triplett, Woolf & Garretson, LLC  
Attention: J. T. Klaus  
2959 North Rock Road, Suite 300  
Wichita, Kansas 67226  
Telephone: (316) 630-8100  
Facsimile: (316) 630-8101  
E-mail: [jtklaus@twgfirm.com](mailto:jtklaus@twgfirm.com)

Applicant's Counsel

Via Christi Health System, Inc.  
8200 E. Thorn Dr.  
Wichita, Kansas 67226  
Attn: Gary E. Knight, Vice President  
Legal Affairs and General Counsel  
Telephone: (316) 858-4923  
Facsimile: (316) 858-4189  
E-mail: [gary\\_knight@via-christi.org](mailto:gary_knight@via-christi.org)

8. A Statement Relative to Ad Valorem Taxes.

The Applicant is not requesting any ad valorem property tax exemption in connection with the Bonds.

9. Administrative Service Fee Agreement.

The Applicant agrees to make a payment to the City to reimburse the City for administrative costs in the amount of \$2,500 per year commencing one year after the delivery of the bonds. In addition, the Applicant will pay all costs of the City relative to the issuance of the Bonds.

10. Brief Statement With Respect to Benefits.

Via Christi, through its subsidiary/affiliates, is committed to providing the best, most comprehensive, health care services in this region. The refinancing of the 1999 Refunded Bonds will save Via Christi significant interest costs, helping Via Christi and its affiliate hospitals to continue to provide technologically advanced services for a healthier community and continue to draw patients, visitors and residents to Via Christi's facilities in Sedgwick County from across Kansas and throughout the region. Furthermore, employees in the health care services field tend to be some of the most highly skilled and profession based employees in any field in the community or in this region.

11. Brief Statement Relative to the Effects of the Proposed Expansion on the Ambient Air Quality of the City of Wichita and Sedgwick County.

The proposed refunding will have no effect on the ambient air quality of the City or Sedgwick County, nor are there any other anticipated adverse environmental effects. The Applicant will agree to comply with the City's policies and requirements relating to environmental matters.

12. A Brief Statement With Respect to Equal Employment Opportunity.

The Applicant will comply with all policies of the City with respect to equal employment opportunity.



13. Arrangements for Sale of the Bonds.

Morgan Stanley & Co. Incorporated, New York, New York has agreed to act as underwriter with regard to the Bonds. A statement of intent provided by Morgan Stanley is included as **Exhibit "A"**.

14. Financial Information.

A copy of Via Christi's audited financial statements and accompanying report for fiscal years ended September 30, 2008 has been provided herewith as **Exhibit "B"**.

In order to permit Via Christi to provide for the refunding of the 1999 Refunded Bonds and to finalize the financing for Project, it is requested at this time that the City Council authorize the Mayor to execute a Letter of Intent for and on behalf of the City whereby the City indicates its intent to issue not to exceed \$95,000,000 of its Hospital Facilities Refunding Revenue Bonds for the purposes described herein. Applicant respectfully requests that such Letter of Intent be valid for a period of three months, so as to provide for the timely refunding of the 1999 Refunded Bonds and provide time for the appropriate structuring of the financing.

Applicant is aware that such a Letter of Intent is only an indication of the intent of the City to issue the proposed Bonds and to refund its previously issued bonds and that such Letter of Intent is subject in all respects to the governing body's final approval of the terms and provisions of a Bond Ordinance, Bond Indenture, Subleases, Guaranties and other related documents. However, upon issuance of such Letter of Intent, Applicant is prepared to proceed in reliance thereon. Should there be any further questions or information which the City may require in evaluating this application, we will be most happy to discuss such matters.

Upon issuance of such Letter of Intent, Applicant is prepared to proceed in reliance thereon. Should there be any further questions or information which the City may require in evaluating this application, we will be most happy to discuss such matters.

Respectfully submitted,

VIA CHRISTI HEALTH SYSTEM, INC.

A handwritten signature in black ink, appearing to read 'David R. Hadley', is written over the printed name of the signatory.

David R. Hadley, Senior Vice President  
and Chief Financial Officer

City of Wichita  
City Council Meeting  
November 17, 2009

**TO:** Mayor and City Council

**SUBJECT:** Memorandum of Understanding between City of Wichita and Wichita Festivals, Inc., for 2010 River Festival  
(All Districts)

**INITIATED BY:** Division of Arts & Cultural Services

**AGENDA:** New Business

-----

**Recommendation:** Approve the Memorandum of Understanding (MOU) between the City of Wichita (City) and Wichita Festivals, Inc., (WFI) and approve funding from Convention and Tourism Fund for the 2010 Wichita River Festival and make necessary budget adjustments.

**Background:** On December 16, 2008, City Council repealed Chapter 3.14 of the ordinances of the City of Wichita relating to River Festivals. The new ordinance imposes general uniform requirements and conditions on special events conducted within the City. A MOU with WFI, to maintain levels of previous economic support, became necessary as a result of this new ordinance.

**Analysis:** The City is committed to continued collaboration with WFI to annually produce the River Festival. It is the wish of the City to continue its support at the same level as previous years. To ensure the terms and conditions of the community event ordinance do not negatively impact or cause WFI to incur additional expenses, the City and WFI have drafted a MOU that clearly delineates the rights and obligations of each party and defines their respective roles for the Wichita River Festival.

The MOU addresses sponsorship and in-kind services to be provided by the City and reporting responsibilities of WFI within 90 days upon completion of the event as well as security during the event. The term of this MOU is for a period of two (2) years with a one year automatic extension unless either party gives written notice, no less than 60 days prior to the one year anniversary of the agreement.

**Financial Consideration:** City sponsorship of \$40,000 will be taken from the Convention and Tourism fund. The City also agrees to meet the commitment of \$50,000 for in-kind services to WFI which is a level similar to the previous year.

**Goal Impact:** This project impacts the Quality of Life by ensuring citizens the continuation of the annual Wichita River Festival which serves approximately 300,000 citizens and has significant economic impact on the Wichita community.

**Legal Considerations:** The MOU has been reviewed and approved to form by Legal.

**Recommendation/Action:** Approve the Memorandum of Understanding (MOU) between the City of Wichita (City) and Wichita Festivals, Inc., (WFI) and approve funding from Convention and Tourism Fund for the 2010 Wichita River Festival and make necessary budget adjustments.

**Attachment:** MOU with WFI for 2010 Wichita River Festival.  
Schedule A – Riverfest Sponsor Rights and Privileges

## **MEMORANDUM OF UNDERSTANDING**

THIS MEMORANDUM OF UNDERSTANDING (the "MOU") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2009 between Wichita Festivals, Inc., 1820 E. Douglas, Wichita, Kansas 67214, a non-for-profit 501(c) (3) corporation existing under the laws of the State of Kansas ("WFI" ) and the City of Wichita, Kansas (the "City") to memorialize the agreement of the parties concerning their ongoing relationship for the purpose of conducting the 2010 Wichita River Festival.

### **Recitals**

WHEREAS, since 1972, WFI has organized, promoted and conducted the Wichita River Festival as a unique annual event and community celebration;

WHEREAS, since at least sometime prior to 1998, pursuant to Wichita City Ordinance No. 39-119, codified at Chapter 3.14 of the Code of the City of Wichita, the City has specifically authorized and permitted WFI to conduct the Wichita River Festival under the terms and conditions, and with the support and cooperation of the City, as set forth in Chapter 3.14 of the Code of the City of Wichita;

WHEREAS, on December 9, 2008, the City amended Chapter 3.11 of the Code of the City of Wichita relating to community events, (the "Special Event Ordinance") in order to impose general uniform requirements and conditions on special events conducted within the City of Wichita, and rescinded Wichita City Ordinance No. 39-119, codified at Chapter 3.14 of the Code of the City of Wichita which was specifically applicable to WFI and the Wichita River Festival;

WHEREAS, it is the intent of the City of Wichita and Wichita Festivals, Inc. to work in cooperation and partnership with the each other to annually produce the Wichita River Festival; and

WHEREAS, the City of Wichita seeks to continue its' support of the Wichita River Festival at the same level as in previous year, to ensure that the requirements and conditions of the Special Event Ordinance do not cause WFI to incur additional expense or suffer economic detriment, WFI and the City enter into this MOU that delineates the respective rights and obligations of the parties and defines their relationship for the Wichita River Festival.

### **Agreement**

NOW THEREFORE, for these reasons, and in consideration of the conditions, covenants and agreements set forth below, WFI and the City agree as follows:

#### **1. RELATIONSHIP BETWEEN THE PARTIES**

The parties agree that the relationship of the parties is between two separate and independent entities. There is not a joint venture, partnership, employer-employee relationship or any principal-agent relationship.

## 2. EXCLUSIVITY

Except for WFI's use of Century II indoor facilities, which shall be the subject of a separate agreement, WFI shall have exclusive operational and vending control over and within the geographic area and locations at which the Wichita River Festival will be conducted, as such geographic area and locations are defined in the event application and permits relating thereto (the "Wichita River Festival Event Area"). The City shall not (a) authorize or permit any other person or entity to conduct any other special event, or (b) grant any other person or entity a transient merchant license to conduct any type of business, within the Wichita River Festival Event Area during the time period of the Wichita River Festival Event, which is conducted during the month of May beginning the Friday immediately prior to Mother's Day and ending 8 days later on the Saturday that immediately follows Mother's Day, without WFI's prior approval. Businesses located within the Wichita River Festival Event Area shall be allowed access to and from their establishments and are allowed the use of sidewalk areas and doorways immediately adjacent to such businesses.

## 3. SECURITY FOR THE WICHITA RIVER FESTIVAL

WFI shall be responsible, according to Section 3.11.060 of the Code of the City of Wichita, to pay the police staffing costs for event specific assignments within the Wichita River Festival. All security and police staffing, as may be required, is to be provided by certified law enforcement officers or other licensed and certified private security personnel.

WFI will contract with Wichita Police Department officers to fill the required security positions based on historical data and as required by the Chief of Police through the WPD special operations/special events coordinator. WFI will pay Wichita Police Department officers at the special event rate of \$30 per hour or an amount agreed upon between WFI and the individual officer. In the event sufficient numbers of Wichita Police Department officers do not sign up to fill the required positions, security staffing may be obtained by employing licensed and certified private security personnel and certified law enforcement from other jurisdictions, as approved by the City through the Wichita Police Department. Officers hired by WFI shall be considered contract employees of WFI. Wichita Police Department Officers hired for the Wichita River Festival shall be entitled to workers compensation coverage provided by the City of Wichita.

The City of Wichita agrees to pay for extraordinary police services which exceed the requirements set forth above and are deemed necessary by the Chief of Police. Such services include, but are not limited to: mounted patrol officers, bomb squad, SCAT and SWAT officers and officers required for the operation of the command center. The Wichita Police Department will work in cooperation with WFI to define which of the above groups represent necessary safety components for use during the Wichita River Festival.

#### 4. IN KIND SERVICES FOR THE WICHITA RIVER FESTIVAL

The City agrees to provide in kind services to WFI in an amount not to exceed \$50,000.00 annually (the "City In Kind Contribution"). Such in kind services are those additional services and items required specifically for the Wichita River Festival, and which the City would not provide in the absence of the Wichita River Festival. Such in kind services include, but are not limited to: additional street sweeping, additional trash removal, barricading and the removal of such barricades for streets and public parking lots for various events, constructing the West Bank Stage Road, use of the portable stage, use of available City picnic tables (not to exceed fifty) , use of City portable bleachers, use of Century II facilities, space and parking, and other similar services that the City has provided to WFI for past festivals. The City will also designate a specific staff person to facilitate and coordinate WFI requests for information related to any new Festival event and manage the WFI special event application process to facilitate timely approval. To help insure availability, WFI will make reservations for use of the portable bleachers and portable stage no later than twelve months prior to the event for which such bleachers or stages are requested.

A meeting shall be held between representatives of WFI and the City departments impacted by the Wichita River Festival, to outline the in kind services requested by WFI and those deemed necessary by the City in preparation and execution of the Wichita River Festival. Requests for the set up, use and delivery of picnic tables, portable bleachers and the portable stage shall be finalized with the Director of Park and Recreation, or his designee, no later than thirty days prior to the start of the festival. The City shall determine the value of the City In Kind Contribution by utilizing the salary costs associated with City staff, equipment costs, the rental value of items such as the stage, tables and barricades and any additional actual costs incurred by the City.

WFI may request the City to provide additional levels of cash sponsorship, and/or in kind services in excess of the amount of the City's In Kind Contribution and/or cash sponsorship set forth in this MOU. Any requests for such additional services must be made no later than thirty days in advance of the festival event for which such services are requested. Such requests shall be made to the Manager of Arts & Cultural Services, and must be approved by the City Manager and/or the City Council depending upon the amount of any such request.

WFI agrees to waive event fees, for festival events sponsored by the City of Wichita Park and Recreation Department. Such events shall include, but not be limited to: the softball tournament and the event at Botanica.

#### 5. CITY SPONSORSHIP

In addition to the in kind services outlined in section 4 above, the City of Wichita will provide WFI with \$40,000 in cash sponsorship for the Wichita River Festival. In exchange, WFI shall include the City of Wichita as a sponsor of the event, providing the City with sponsor promotion, recognition and all other benefits as are described in more detail on the attached Schedule A; sponsorship benefits to be provided for the total in-kind and cash contributions made by the City for the event.

## 6. REPORTS & ACCOUNTING

Within 90 days after the completion of the Wichita River Festival Event, the City shall provide WFI with a report and accounting that sets forth and itemizes the City's determination of the value of the City In Kind Contribution as described in Section 4 above. The parties agree that they will cooperate with each to provide information and documents that either party may request with regard to the parties' obligations under Sections 3 and 4 above.

## 7. APPLICATION PROCESS

For the 2010 Wichita River Festival, the City agrees to accept the format and details provided in the Wichita River Festival Report to the City for the 2009 Wichita River Festival as being sufficient for compliance with the application process contained in the Special Event Ordinance. All additional applicable licenses required by the City must be completed and submitted with the special event application. WFI shall be responsible for payment of the multiple day community event permit fee, \$1,000.00 as set forth by City Resolution 08-538 and all other licensing fees which may be applicable to specific events conducted by WFI. All proposed activities must be submitted by WFI for approval by the City of Wichita, no later than forty-five (45) days prior to the event.

## 8. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT

WFI and the City agree that they have a joint obligation to comply with the Americans with Disabilities Act. (ADA). WFI and the City agree that they have the obligation to consider the accommodation request(s) from qualified disabled individuals. WFI will ensure, to the full extent required by the ADA, which qualified individuals with disabilities receive equitable access to the programs and activities provided by WFI.

## 9. INDEMNIFICATION

The parties agree to indemnify and hold harmless the other party, its governing board, officers, agents, and employees against any and all claims, damage, liability, injury expense, demands, causes of actions, judgments including court costs and attorney's fees arising out of or resulting from the negligence or intentional acts of its officers, agents or employees. In the event such loss is proximately caused by the acts of parties and their officers, agents or employees, each shall be responsible for its proportionate share of claimant's damages under the law of the state of Kansas. Provided, however, that such indemnification shall not be required to the extent that the City has a defense against or limitation of its liability under the Kansas Tort Claims Act.

The parties agree this provision shall survive the termination of this MOU.

## 10. GOVERNING LAW

The parties agree that the law of the state of Kansas shall govern this MOU, and that any suit or cause of action by either party against the other shall be filed in the Eighteenth Judicial District of the State of Kansas.

#### 11. COMPLETE AGREEMENT

The parties agree that this MOU constitutes the entire agreement of the parties and that no prior agreement or representation, written or oral, shall be binding or of any force or effect. Further, this MOU may not be amended, modified, altered or enlarged except in writing signed by the duly authorized representatives of the parties hereto.

#### 12. AGREEMENT BINDING

The parties agree that this MOU shall be binding upon the successors and legal representatives of the parties hereto. Neither party shall assign this MOU or any of their respective rights, obligations or interest in it.

#### 13. TERM

The term of this MOU will be for two (2) years from the date of the parties' execution, with a one year automatic extension, unless a party gives written notice to the other party, not less than sixty (60) days prior to such anniversary date, that the term of the MOU shall not be extended. Such notice shall be given as provided for by Section 13 below.

#### 14. NOTICES

All notices with respect to this MOU shall be given by first class mail or hand-delivery to the parties as follows:

City:

WFI:

Carl Brewer, Mayor, City of Wichita  
455 N. Main, 13<sup>th</sup> Floor  
Wichita, Kansas 67202

Ms. Janet Wright, President/CEO, WFI  
1820 E. Douglas  
Wichita, Kansas 67214

#### 15. SEVERABILITY

If any term, provision, covenant or condition of this MOU is ruled invalid, void, or unenforceable by a court of competent jurisdiction, this MOU will nonetheless remain in full force and effect as to all remaining terms, provisions, covenants and conditions.

IN WITNESS HEREOF, the duly authorized representatives of the parties have hereunto set their hand on the date and year written.

Wichita Festivals Inc,

City of Wichita

By:

  
Chief Executive Officer

By:

\_\_\_\_\_  
Mayor, City of Wichita

Date:

11-3-09

Date:



## **Schedule A**

### ***2010 Riverfest Sponsor Rights and Privileges***

#### **Activation Assistance**

- Assistance in developing creative ideas to maximize return on sponsorship investment.

#### **On-Site Product Marketing**

- Sampling, giveaways, etc., utilizing a designated 10' x 10' site or individualized on-site marketing for all 9 days of the Festival. This must be confirmed by February 1<sup>st</sup>.

#### **Web Site Presence**

- Opportunity to place a banner ad on homepage of the Riverfest web site highlighting partnership.
- Link to sponsor web site from sponsorship page or event listing
- Weblink in event description on web site
- Editorial information about sponsor on sponsorship web page

#### **Signage & Print Materials**

- Company Name/logo in Riverfest Guide (distribution 180,000)
- Street pole banner with sponsor Name/logo placed in downtown area two weeks prior to and during Festival
- Feature article in an issue of *Festivities* noting sponsor role in Riverfest and information about company. (Circulation 4,000)
- Identification in all print materials related specifically to sponsor event.

#### **Media**

- Name/logo recognition in “thank you” ad placed in the Wichita Eagle prior to the Festival.
- Inclusion of company name in all event press releases recognizing major Riverfest sponsors
- Name/logo included in official radio and television promotional campaign

#### **Licensing**

- Authorization to use Riverfest poster artwork and tag line on sponsor product advertisements, web site, merchandise and other marketing materials using WFI identity standards. WFI approval of the art and product will be required.

### **Public Recognition**

- Public address announcements throughout the Festival.

### **Hospitality**

- Priority placement in Riverfest Sundown Parade
- 6 Invitations (for 4 guests each) to the WFI Sponsor Recognition Party. Additional guest tickets may be purchased at \$25 each.
- Fifteen (15) Riverfest cloisonné logo lapel pins or twenty-one (21) Riverfest buttons.
- 20% discount for all employees on Festival merchandise purchased prior to the Festival
- Framed and signed Riverfest poster.
- An official 2010 sponsor recognition plaque.
- 5 VIP parking passes good for all nine days

### **Sponsor Obligations:**

- Utilize existing marketing mechanisms to promote and market Riverfest and sponsor role in the Festival.
- Assign liaison to work with WFI in fulfillment of sponsor privileges and obligations.
- Purchase Riverfest buttons to be given or re-sold to customers, vendors, employees or a charitable organization for use by their clients. Suggested amount to be no less than 1% of sponsorship investment.
- Provide, as capable, employees to assist with planning of event.

**City of Wichita  
City Council Meeting  
November 17, 2009**

**TO:** Mayor and City Council

**SUBJECT:** 47<sup>th</sup> Street South Improvement, between Lulu and Hydraulic  
(District III)

**INITIATED BY:** Department of Public Works

**AGENDA:** New Business

-----

**Recommendation:** Approve the project.

**Background:** Construction is underway to improve the 47<sup>th</sup> Street South and I-135 Freeway Interchange, including improvements to 47<sup>th</sup> Street from Lulu to Broadway. The project, which is being administered by the Kansas Department of Transportation (KDOT), is funded by the American Recovery and Reinvestment Act of 2009 (ARRA). The bid for construction was significantly lower than anticipated. As a result, KDOT officials have advised that ARRA funds are available to extend the 47<sup>th</sup> Street improvement east to Hydraulic. An agreement with HNTB has been prepared to provide construction plans for the segment of 47<sup>th</sup> Street between Lulu and Hydraulic.

**Analysis:** The proposed project will reconstruct 47<sup>th</sup> Street South between Lulu and the west line of Hydraulic to provide a five lane roadway with four through lanes and a center two-way left turn lane. Drainage improvements will be included with the project. New sidewalk will be constructed on both sides of 47<sup>th</sup> Street and the available right-of-way will be landscaped. Construction is planned to begin in 2010, but will be dependent on coordination with the portion of the interchange project west of I-135. Two-way traffic will be maintained on 47<sup>th</sup> at all times during construction.

**Financial Considerations:** The City of Wichita is responsible for completing design. KDOT will utilize ARRA funding for construction. The estimated project cost, including design and construction is \$900,000 with \$250,000 funded by City General Obligation bonds *included in the proposed 2009-2018 CIP*, and \$650,000 by ARRA funds. The HNTB design fee is \$117,800.

**Goal Impact:** This project addresses the Efficient Infrastructure goal by improving traffic flow through a major transportation corridor.

**Legal Considerations:** The Law Department has approved the authorizing ordinance and design agreement as to legal form.

**Recommendation/Action:** It is recommended that the City Council approve the project, approve the design agreement, place the ordinance on first reading and authorize the signing of State/Federal Agreements as required.

**Attachments:** Map, CIP sheet, design agreement and ordinance.

First Published in the Wichita Eagle November 27, 2009

ORDINANCE NO. 48-559

AN ORDINANCE DECLARING **47TH STREET SOUTH BETWEEN HYDRAULIC AND LULU (472-84872)** TO BE A MAIN TRAFFICWAY WITHIN THE CITY OF WICHITA, KANSAS; DECLARING THE NECESSITY OF AND AUTHORIZING CERTAIN IMPROVEMENTS TO SAID MAIN TRAFFICWAY; AND SETTING FORTH THE NATURE OF SAID IMPROVEMENTS, THE ESTIMATED COSTS THEREOF, AND THE MANNER OF PAYMENT OF SAME.

WHEREAS, K.S.A. 12-685 provides that the governing body of any city shall have the power to designate and establish by ordinance any existing or proposed street, boulevard, avenue, or part thereof to be a main trafficway, the main function of which is the movement of through traffic between areas of concentrated activity within the city, and

WHEREAS, K.S.A. 12-687 provides that the governing body of any city shall have the power to improve or reimprove or cause to be improved or reimproved, any main trafficway or trafficway connection designated and established under the provisions of K.S.A. 12-685 et seq., and

WHEREAS, K.S.A. 12-689 provides that all costs of improvements or reimprovements authorized under the provisions of K.S.A. 12-687, including acquisition of right-of-way, engineering costs, and all other costs properly attributable to such projects, shall be paid by the city at large from the general improvement fund, general revenue fund, internal improvement fund, or any other fund or funds available for such purpose or by the issuance of general improvement bonds.

THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. That **47th Street South, between Hydraulic and Lulu (472-84872)** in the City of Wichita, Kansas is hereby designated and established as a main trafficway, the primary function of which is the movement of through traffic between areas of concentrated activity within the City, said designation made under the authority of K.S.A. 12-685.

SECTION 2. It is hereby deemed and declared to be necessary by the governing body of the City of Wichita, Kansas, to make improvements to **47th Street South, between Hydraulic and Lulu (472-84872)** as a main trafficway in the following particulars:

The design, construction of a roadway, acquisition of right-of-way, installation of traffic signals, relocation of utilities and landscaping, as necessary for a major traffic facility.

SECTION 3. The cost of the construction of the above described improvements is estimated to be **Nine Hundred Sixty Thousand Dollars (\$960,000)** exclusive of the cost of interest on borrowed money. To the extent the cost of such improvements are not paid by Federal Grants, administered by the Kansas Department of Transportation, the City of Wichita, Kansas, is authorized to issue general obligation bonds to pay such costs under the authority of K.S.A. 12-689 up to a maximum amount of \$960,000, exclusive of the cost of interest on borrowed money.

SECTION 4. The above described main trafficway improvements shall be made in accordance with the Plans and Specifications prepared under the direction of the City Engineer of the City of Wichita and approved by the governing body of the City of Wichita, Kansas. Said plans and specifications are to be placed on file in the office of the City Engineer.

SECTION 5. Be it further ordained that the improvements described herein are hereby authorized under the provisions of K.S.A. 12-685 et seq.

SECTION 6. That the City Clerk shall make proper publication of this ordinance, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 24th day of November, 2009.

\_\_\_\_\_  
CARL BREWER, MAYOR

ATTEST:

\_\_\_\_\_  
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
GARY REBENSTORF, DIRECTOR OF LAW

# CAPITAL IMPROVEMENT

## PROJECT AUTHORIZATION

CITY OF WICHITA

USE:

To Initiate Project  
To Revise Project

|   |
|---|
| X |
|   |

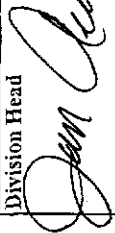
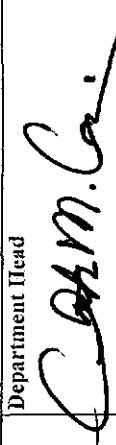

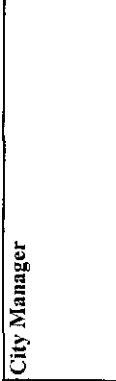
1. Prepare in triplicate
2. Send original & 2 copies to budget.
3. City Manager to sign all copies.
4. File original w/ initiating resolution in City Clerk.
5. Return 2nd copy to initiating department.
6. Send 3rd copy to Controller.

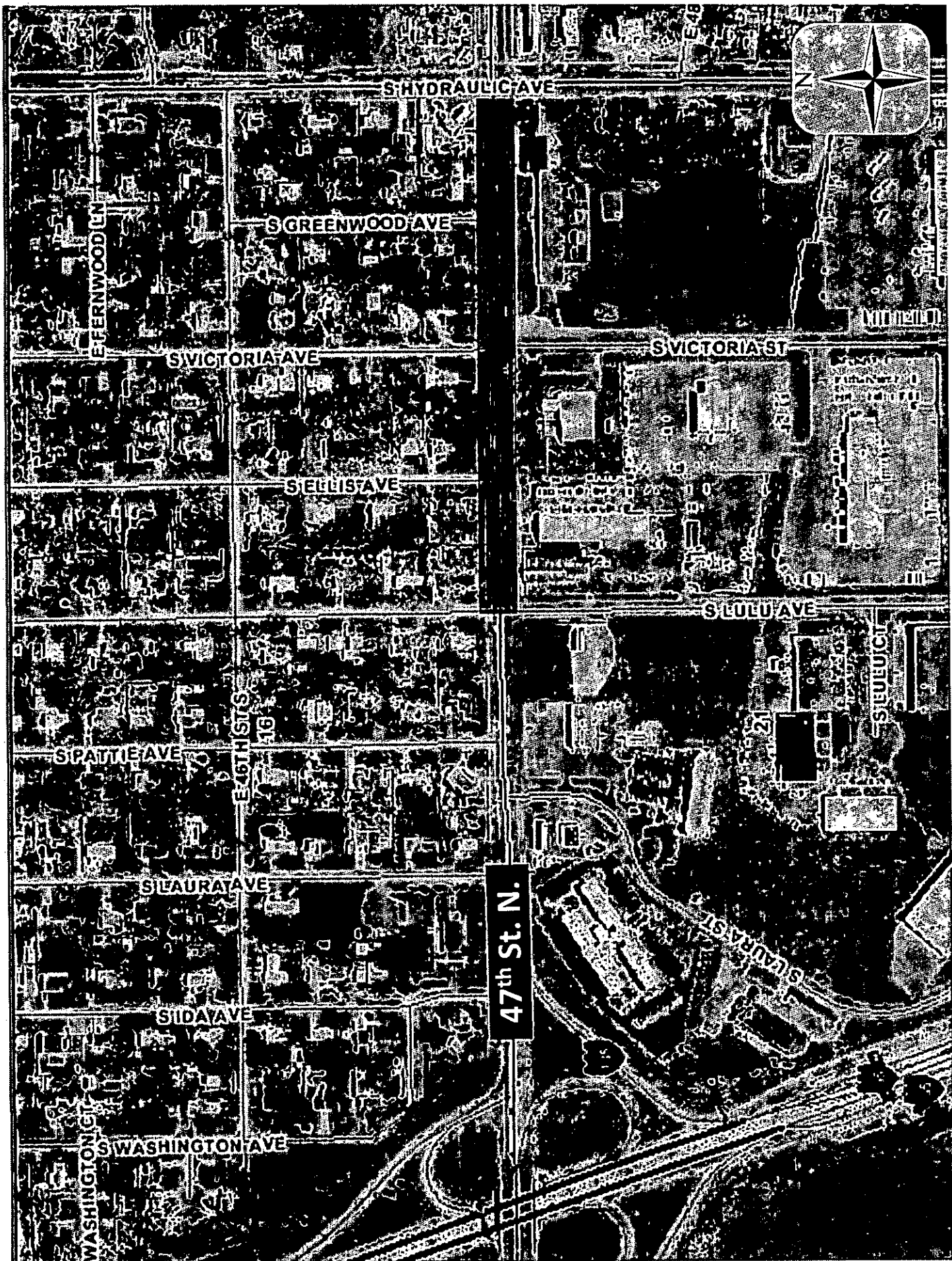
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|-------------------------------------------------------------------------|-------------------------------|------------------------------------|--------------------------------------------------------------------------|-----------|
| 1. Initiating Department<br>Public Works                                | 2. Initiating Division<br>Eng | 3. Date<br>10/29/2009              | 4. Project Description & Location<br>47th Street South; Lulu - Hydraulic |           |
| 5. CIP Project Number                                                   | 6. Accounting Number          | 7. CIP Project Date (Year)<br>2009 | 8. Approved by WCC Date                                                  |           |
| MS-                                                                     |                               |                                    |                                                                          |           |
| 9. Estimated Start Date                                                 | 10. Estimated Completion Date | 11. Project Revised                |                                                                          |           |
| As Required                                                             | As Required                   |                                    |                                                                          |           |
| 12. Project Cost Estimate                                               |                               |                                    |                                                                          |           |
| ITEM                                                                    | GO                            | SA                                 | ARRA                                                                     | TOTAL     |
| Right of Way                                                            |                               |                                    |                                                                          |           |
| Paving, grading & const.                                                | \$250,000                     |                                    | \$650,000                                                                | \$900,000 |
| Bridge & Culverts                                                       |                               |                                    |                                                                          |           |
| Drainage                                                                |                               |                                    |                                                                          |           |
| Sanitary Sewer                                                          |                               |                                    |                                                                          |           |
| Sidewalk                                                                |                               |                                    |                                                                          |           |
| Water                                                                   |                               |                                    |                                                                          |           |
| Freeway                                                                 |                               |                                    |                                                                          |           |
| Totals                                                                  | \$250,000                     |                                    | \$650,000                                                                | \$900,000 |
| Total CIP Amount Budgeted                                               |                               |                                    |                                                                          |           |
| Total Prelim. Estimate                                                  |                               |                                    |                                                                          |           |
| 13. Recommendation: Approve the project, design agreement and ordinance |                               |                                    |                                                                          |           |

|                   |     |    |
|-------------------|-----|----|
| Platting Required | Yes | No |
| Lot Split         |     |    |
| Petition          |     |    |
| Ordered by WCC    | X   |    |

Remarks:

472-84872

|                                                                                                        |                                                                                                          |                                                                                                        |                                                                                                     |
|--------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|
| Division Head<br> | Department Head<br> | Budget Officer<br> | City Manager<br> |
| Date                                                                                                   | Date                                                                                                     | Date                                                                                                   | Date                                                                                                |



132019

First Published in the Wichita Eagle

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE DECLARING 47TH STREET SOUTH BETWEEN HYDRAULIC AND LULU (472-84872) TO BE A MAIN TRAFFICWAY WITHIN THE CITY OF WICHITA, KANSAS; DECLARING THE NECESSITY OF AND AUTHORIZING CERTAIN IMPROVEMENTS TO SAID MAIN TRAFFICWAY; AND SETTING FORTH THE NATURE OF SAID IMPROVEMENTS, THE ESTIMATED COSTS THEREOF, AND THE MANNER OF PAYMENT OF SAME.

WHEREAS, K.S.A. 12-685 provides that the governing body of any city shall have the power to designate and establish by ordinance any existing or proposed street, boulevard, avenue, or part thereof to be a main trafficway, the main function of which is the movement of through traffic between areas of concentrated activity within the city, and

WHEREAS, K.S.A. 12-687 provides that the governing body of any city shall have the power to improve or reimprove or cause to be improved or reimproved, any main trafficway or trafficway connection designated and established under the provisions of K.S.A. 12-685 et seq., and

WHEREAS, K.S.A. 12-689 provides that all costs of improvements or reimprovements authorized under the provisions of K.S.A. 12-687, including acquisition of right-of-way, engineering costs, and all other costs properly attributable to such projects, shall be paid by the city at large from the general improvement fund, general revenue fund, internal improvement fund, or any other fund or funds available for such purpose or by the issuance of general improvement bonds.

THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. That 47th Street South, between Hydraulic and Lulu (472-84872) in the City of Wichita, Kansas is hereby designated and established as a main trafficway, the primary function of which is the movement of through traffic between areas of concentrated activity within the City, said designation made under the authority of K.S.A. 12-685.

SECTION 2. It is hereby deemed and declared to be necessary by the governing body of the City of Wichita, Kansas, to make improvements to 47th Street South, between Hydraulic and Lulu (472-84872) as a main trafficway in the following particulars:

The design, construction of a roadway, acquisition of right-of-way, installation of traffic signals, relocation of utilities and landscaping, as necessary for a major traffic facility.



SECTION 3. The cost of the construction of the above described improvements is estimated to be **Nine Hundred Sixty Thousand Dollars (\$960,000)** exclusive of the cost of interest on borrowed money. To the extent the cost of such improvements are not paid by Federal Grants, administered by the Kansas Department of Transportation, the City of Wichita, Kansas, is authorized to issue general obligation bonds to pay such costs under the authority of K.S.A. 12-689 up to a maximum amount of \$960,000, exclusive of the cost of interest on borrowed money.

SECTION 4. The above described main trafficway improvements shall be made in accordance with the Plans and Specifications prepared under the direction of the City Engineer of the City of Wichita and approved by the governing body of the City of Wichita, Kansas. Said plans and specifications are to be placed on file in the office of the City Engineer.

SECTION 5. Be it further ordained that the improvements described herein are hereby authorized under the provisions of K.S.A. 12-685 et seq.

SECTION 6. That the City Clerk shall make proper publication of this ordinance, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
CARL BREWER, MAYOR

ATTEST:

\_\_\_\_\_  
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
GARY REBENSTORF, DIRECTOR OF LAW

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

HNTB CORPORATION

for

47TH STREET FROM LULU TO HYDRAULIC

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and HNTB CORPORATION, party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

**47TH STREET FROM LULU TO HYDRAULIC**  
(Project No. 472 84872)

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing 47th Street from the intersection of Lulu to Hydraulic and to perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

- A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).
- B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.
- C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.
- D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.
- E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

- F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.
- G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.
- H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.
- I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.
- J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than \$500,000.00 subject to a deductible of \$50,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease, or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation - Statutory  
Employer's Liability - \$500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

- K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

### III. THE CITY AGREES:

- A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.
- B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in Exhibit A.
- C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.
- D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.
- E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as

Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.

- F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

#### IV. PAYMENT PROVISIONS

- A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be based upon the ENGINEER'S actual costs and may be less than the estimated amount. Payment shall be full compensation for salary costs, expenses, overhead (overhead to be applied to straight-time salary cost only with premium overtime reimbursed at cost), profit, subcontracting and all other costs required in performing the work described herein. Overhead includes fringe benefits. The test of the allowability to be applied for this agreement shall be based on the provisions of the agreement and on the reasonableness of allocation of costs under generally accepted accounting principles and practices. Overhead costs shall be computed by multiplying an Overhead Factor times the actual salaries or wages paid to personnel assigned to the PROJECT. The Overhead Factor shall be 155.50 percent for the work required by this agreement. The ENGINEER shall submit to CITY the basis for the overhead rate prior to any payments.

Total payments to the ENGINEER for the preparation of the work associated with the PROJECT shall include the actual costs accruing in the performance of the professional services as outlined in this agreement which are estimated to amount to \$105,585.00 plus a fixed fee for profit of \$12,285.00 so that the total payments shall not exceed the sum of \$117,870.00 and shall generally be in accordance with the estimate provided as Attachment C. Profit shall not be applied to subcontractors, i.e., landscape architectural services, geotechnical services, etc.; or to direct expenses such as plan reproduction, CAD system services, etc.

During the progress of work covered by this agreement, partial payments may be made to the ENGINEER at intervals of one calendar month. The progress billings shall be supported by documentation acceptable to the City Engineer which shall include a project bar chart or other suitable progress chart indicating progress on the PROJECT and a record of the time period to complete the work, the time period elapsed, and the time period that remains to complete the work. Billings submitted during the progress of the work will be paid on the basis of the costs accrued to the PROJECT plus a fee for profit based upon a fixed percentage of the ENGINEER'S actual costs. Accumulated partial payments for the PROJECT shall also be based on milestones in Exhibit A and shall not exceed eighty-five percent (85%) of the total fees for services prior to satisfactory completion of all work required by this agreement. The major tasks and accumulated partial payment amounts are listed below:

- B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:

1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

#### V. THE PARTIES HERETO MUTUALLY AGREE:

- A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work, or because the services of the ENGINEER are unsatisfactory; PROVIDED, however, that in any case the ENGINEER shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the provisions of this agreement, but in

no case shall payment be more than the ENGINEER'S actual costs plus a fee for profit based upon a fixed percentage of the ENGINEER'S actual costs.

- B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.
- C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.
- D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.
- E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.
- F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.
- G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.
- H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY COUNCIL

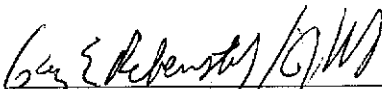
\_\_\_\_\_  
Carl Brewer, Mayor

SEAL:

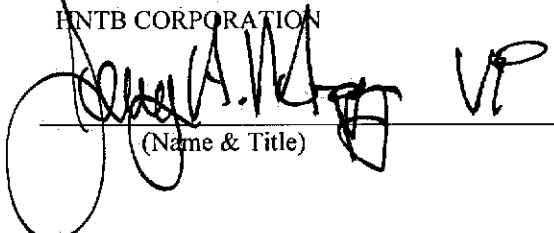
ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

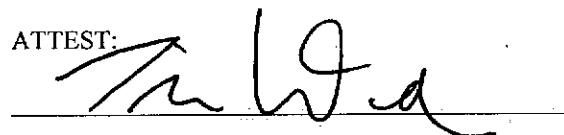
Approved as to Form:

  
\_\_\_\_\_  
Gary Rebenstorf, Director of Law

\_\_\_\_\_  
HNTB CORPORATION

  
\_\_\_\_\_  
(Name & Title)

ATTEST:

  
\_\_\_\_\_  
(Name & Title)

## SCOPE OF SERVICES

### *47<sup>th</sup> St. Widening Lulu to Hydraulic Project*

#### **Project Description:**

This project consists of widening 47<sup>th</sup> Street from the intersection of Lulu St to Hydraulic in South Wichita, KS. The widening of 47<sup>th</sup> St will begin at the end of the current KDOT design project 135-87 KA-1006-02. This includes the intersection of Lulu and 47<sup>th</sup> St. Signal design will not be a part of this contract. This five lane section will match into existing 47<sup>th</sup> St. west of Hydraulic and does not include redesign of the 47<sup>th</sup> St and Hydraulic intersection. Design elements include widening the existing four lane section to a five lane section, extending the existing storm sewer system, waterline relocation design, identifying right of entry locations and developing legal descriptions, reconstruction of sidewalks and an upgraded intersection at Lulu Street.

#### **Task 1.      Preliminary Roadway Design**

- 1.1      Process final field surveys and update DTM for use in developing cross sections and grading limits.
- 1.2      Develop typical sections.
- 1.3      Develop 47<sup>th</sup> Street geometry, including horizontal and vertical alignments.
- 1.4      Develop entrance profiles along 47<sup>th</sup> St. (9 entrances)
- 1.5      Develop intersection design at 47<sup>th</sup> & Lulu.
- 1.6      Model footprint of construction using the proposed typical section and determine approximate limits of construction.
- 1.7      Develop preliminary right of way and temporary easement requirements based on the design and construction limits.

#### ***Field Check Plans:***

- 1.8      Develop title sheet.
- 1.9      Develop survey reference sheet.
- 1.10    Prepare preliminary plan and profile sheets at 1"=20' scale. Included are plan/profile sheet layout and the addition of construction notes to the plans (Assumes 3 plan/3 profile sheets).
- 1.11    Create profile sheets for entrances (Assumes 12).
- 1.12    Prepare preliminary roadway cross sections based on centerline of right of way at 50' intervals and determine grading limits. Cross sections will depict the standard roadway typical section ditching and special grading. (Assumes 13 sheets).

- 1.13 Prepare construction plans to indicate preliminary sequence of construction for multiple phase project.
  - 1.13.1 Prepare phasing typical sections sheets.
  - 1.13.2 Prepare phasing plan sheets.
- 1.14 Prepare quantity calculations and prepare Engineer's Opinion of Probable Construction Cost for Field Check.
- 1.15 Quality assurance review of preliminary plans and cost estimate.
- 1.16 Prepare utility plans for distribution. (Assumes 15 half size color sets).
- 1.17 Meet with and coordinate with City of Wichita's Utility Location Coordination Committee (ULCC). Assumes 1 meeting.
- 1.18 Prepare and submit Field Check set and preliminary Estimate to City of Wichita for review. (Assumes 4 half size sets and 1 copy of estimate).
- 1.19 Schedule and attend field check meeting with City.

**Task 2. Preliminary Drainage Design**

- 2.1 Collect drainage data from Survey and plan.
- 2.2 Prepare a Survey request for additional drainage features.
- 2.3 Develop drainage area maps for the project site.
- 2.4 Calculate the Pavement Drainage spread and determine inlet spacing, based on single crowned roadway and 5 year condition.
- 2.5 Design of Closed Drainage system inlets including structure type, size and pipe profiles.
- 2.6 Conduct Quality Assurance / Quality Control reviews.
- 2.7 Prepare for field check submittal, including assisting in plan development of inlets, drainage area maps, etc..., attend Field Check meeting.
- 2.8 Respond to comments and revise design accordingly.

**Task 3. Final Roadway Design**

- 3.1 Coordinate drainage structure configurations, inlet and outlet treatments.
- Office Check Plans:**
- 3.2 Develop plans and details for pavement marking (Assumes 3 plan sheets).
  - 3.3 Develop signing plans and details (Assumes 10 sheets for plan and details)
  - 3.4 Finalize plan and profile sheets for 47<sup>th</sup> St.
  - 3.5 Finalize driveway profiles.
  - 3.6 Finalize intersection details at 47<sup>th</sup> & Lulu.
  - 3.7 Develop joint plans for all concrete pavement.

- 3.8 Develop general details to include roadway and pavement details, drainage details and other miscellaneous details.
- 3.9 Finalize cross sections. Assume one final set, not sections broken out by construction phases.
- 3.10 Design Curb Returns. Assumes one intersection.
- 3.11 Erosion Control and seeding. Assumes KDOT standard LA sheets with quantities based on mixes used matching plans for project west of Lulu. Assumes one Erosion Control plan sheet.
- 3.12 Finalize plans and details for traffic control.
- 3.13 Perform earthwork calculations and quantities. Assumes no earthwork by construction phases.
- 3.14 Perform quantity calculation and prepare schedules and quantity summary tables.
- 3.15 Quality assurance review of Office Check Plans.
- 3.16 Make final office check plan design changes, incorporate any right of way negotiation changes, add sheet numbers and final quality control checks. Prepare full (22"x36") size office check plans and half (11"x18") size plans for review. Assumes no Office Check meeting.

***Final Plans:***

- 3.17 Revise plans based on office check comments.
- 3.18 Prepare specifications and special provisions for the project. Assumes KDOT standard specs.
- 3.19 Update construction cost estimate for the proposed improvement. Estimates will be prepared for the final plans and the final engineer's estimate for bidding purposes.
- 3.20 Prepare full and half size final plans and specifications.

**Task 4.     Drainage Design**

- 4.1 Design Temporary Drainage system as a plan schematic. Pipe profiles and quantities are not included.
- 4.2 Finalize pipe profiles sheets for Closed Drainage systems.
- 4.3 Prepare a Quantity List for drainage items, and populate the standard tables within the plans.
- 4.4 Maintain up to date Drainage Area maps, for inclusion within the plans.
- 4.5 Conduct Quality Assurance / Quality Control reviews.
- 4.6 Prepare for office check submittal, including updating plans for inlets, drainage area maps, etc...
- 4.7 Respond to Office Check comments and revise design accordingly.



**Task 5.     Project Coordination**

5.1     Project Management

Provide general project management, supervision and coordination of concept team activities.

5.2     Monthly Project Meetings

Prepare for, attend and document meetings with design team, Developer and City of Wichita.

5.3     Quality Assurance/Subconsultant Coordination

Provide and monitor project quality control plan and coordination with design team and subconsultant.

5.4     Project Reporting

Prepare progress reports and invoices.

**Task 6.     Survey Coordination**

6.1     Project Set-up

Perform research, kick-off team meeting, set up files.

6.2     Calculate Dimensions and Areas

Calculate dimensions and areas for Right of Entry locations as determined by the engineer. Assumes 10 locations.

6.3     Legal Descriptions

Prepare and check legal descriptions of ROE locations. Assumes 10 locations.

6.4     Tract Maps

Prepare and check Tract Maps accompanying each legal description. Assumes 10 locations.

6.5     Quality Control

Quality Assurance/Quality Control.

## **Task 7. Water system relocation design**

### **Conflict analysis**

Engineer shall attempt to avoid designing conflicts with the existing water lines. Where conflict cannot be avoided, engineer shall identify the extent of the conflict.

### **Relocation Concept**

Where conflict with existing water line cannot be avoided engineer shall propose one concept for relocation to mitigate the conflict. Engineer shall review the concept with the City Engineer or his designated representative for concurrence in determining the best horizontal and vertical alignments for the project prior to progressing to detail aspects of the work.

### **Design**

Engineer shall develop water alignments and profiles for the relocation(s) to a preliminary level. Preliminary water alignments and grades are to be reviewed with the CITY by the ENGINEER for approval prior to proceeding to detail aspects of the work.

### **Field Check**

When authorized by the CITY, prepare field check plans and a preliminary cost estimate for the PROJECT based on approved preliminary concepts as required by the CITY. ENGINEER to submit one copy of preliminary cost estimate and three (3) sets of field check plans to the CITY. ENGINEER to participate in one field check of the PROJECT with the CITY when required. Major items of work included in development of field check plans are:

- (a) Field Surveys. The field surveys conducted for the PROJECT will include the area of the new water line alignment, and will be used for water line relocation design development.
- (b) field check plans submitted to the City Engineer's office for distribution to utility companies will include the plan sheets devoted to water line relocation.
- (c) Soils and Foundation Investigations. No subsurface investigation specifically for water line relocation is anticipated.
- (d) No additional right-of-way is anticipated to be needed.

### **Office Check**

When authorized by the CITY prepare office check plans for the PROJECT based upon comments as agreed upon in field check review. Major items of work included in development of office check plans are:

- (a) Submit three (3) sets of office check plans to the CITY with one copy of supplemental specifications and one copy of cost estimates and quantities of work units of the PROJECT for office check. (Cost estimates to be based on current unit prices for similar work in the Wichita area unless otherwise directed by the CITY.) Field check plans marked with CITY comments are to be returned to the CITY with office check plan submittals. ENGINEER to participate in one office check of the PROJECT with the CITY when required.
- (b) Utility conflicts. ENGINEER shall coordinate water line relocation information with design of Roadway improvements to avoid conflict when possible.

- (c) Submit fifteen (15) sets of office check plans to the City Engineer's office for distribution to utility companies. Submit additional sets of office check plans as required for utility and pipeline companies who are not members of the Utility Location Coordination Council.

## **Final**

When authorized by the CITY prepare final plans for the PROJECT based upon comments as agreed upon as a result of the office check review. Major items of work included in development of final plans are:

- (a) *Final Plan Submittals.*
- a. Electronic versions of the approved final plans for all projects need to be submitted on CD or DVD in both AutoCAD and .pdf format (.dwg format is preferred, .dxf is acceptable). Text fonts other than standard AutoCAD fonts are to be included with drawing files. Pdf files should be scalable to 22"x36" and oriented right side up.
  - b. Two 11"x17" half-scale hardcopies of all plans are required. Four additional half-scale sets are required for all KDOT/Federally funded projects.
  - c. Mylar plans are required for all water projects and any plans that incorporate water line improvements (both CITY and KDOT). Mylar cover sheet only is required for all other KDOT/Federally funded projects for the signature purposes.
  - d. Field notes, other pertinent project mapping records, supplemental specifications, special provisions and cost estimates are to be provided to the City Engineer for the taking of bids as appropriate for the CITY and/or KDOT.
  - e. Technical construction specifications shall in general follow the City of Wichita's Standard Specifications and/or KDOT Standard Specifications supplemented as necessary to suit PROJECT requirements. Plan profile sheets shall also be required for water distribution system/water supply line improvements.
  - f. Engineer's cost estimate information shall be submitted in tabular form and on a unit cost basis, as approved by the CITY and as required by KDOT. Pay items of work shall conform to CITY or KDOT standards as applicable.
  - g. Final plans when submitted shall be complete and ready for reproducing for distribution to prospective bidders

## **PROJECT DELIVERABLES**

### **Deliverables Provided by HNTB Corporation**

#### **Field Check Plans**

##### **Plan Deliverables**

1. Field Check Plans: (Roadway plans will be prepared in English units.)
  - Title Sheet
  - Typical Sections

- Plan and Profile Sheets (edges of pavement, preliminary construction limits, drainage structures, profile grade)
- Intersection Layouts
- Drainage Area Maps
- Miscellaneous Details
- Preliminary Construction Sequencing/Traffic Control Concept Layouts
- Cross Sections
- Preliminary Cost Estimate

## **Final Plans**

### **Plan Deliverables**

1. Final Plans: (Roadway plans will be prepared in English units.)
  - Title Sheet
  - Typical Sections
  - Plan and Profile Sheets (edges of pavement, preliminary construction limits, drainage structures, vert. and horiz. geometry, general notes, construct/ROE notes)
  - Intersection Layouts
  - Curb Returns
  - Joint Layout
  - Pavement Details
  - Drainage Structure Details
  - Schedule of Structures
  - Water System
  - Sewer System
  - Drainage Data Sheet
  - Summary of Quantities
  - Erosion Control plan and Erosion Control/Seeding Standard Sheets and Quantities
  - Signing and Pavement Marking Plans, Details, and Quantities
  - Traffic Control Plans, Details, and Quantities
  - Drainage Area Maps
  - Cross Sections
  - Engineer's Estimate of Probable Construction Cost

## **Miscellaneous**

1. Legal Descriptions and other documents necessary for the acquisition of Right of Entry.

2. Preliminary Plans to Utilities:

- Title Sheet
- Typical Sections
- Plan & Profile Sheets
- Pipe Profiles
- Cross Sections

**Deliverables Provided by The City of Wichita**

- As-Built Information (Roadway), including cross sections and geology data.
- Right of Entry onto private property for surveys if negotiations with property owners are unsuccessful.
- Standard drawings and standard plan sheets from the City of Wichita.
- Timely review and documentation of review comments of project submittals.

***Bid and construction Phase Services***

Bidding assistance and Construction phase services including response to Requests for Information (RFI) are not included in the scope of services. Such services are available as Additional Services.

| 47th St Widening<br>Schedule of Work<br>HNTB JOB NO. 50317 |              |      |               |      |               |       |      |      |              |       |      |      |               |       |       |     |      |       |       |
|------------------------------------------------------------|--------------|------|---------------|------|---------------|-------|------|------|--------------|-------|------|------|---------------|-------|-------|-----|------|-------|-------|
| Task                                                       | October 2009 |      | November 2009 |      | December 2009 |       |      |      | January 2010 |       |      |      | February 2010 |       |       |     |      |       |       |
|                                                            | 19-25        | 28-1 | 2-8           | 9-15 | 16-22         | 23-29 | 30-6 | 7-13 | 14-20        | 21-27 | 28-3 | 4-10 | 11-17         | 18-24 | 25-31 | 1-7 | 8-14 | 15-21 | 22-28 |
| Notice to Proceed                                          |              |      |               |      |               |       |      |      |              |       |      |      |               |       |       |     |      |       |       |
| Mapping & Surveying                                        |              |      |               |      |               |       |      |      |              |       |      |      |               |       |       |     |      |       |       |
| Preliminary Roadway Design                                 |              |      |               |      |               |       |      |      |              |       |      |      |               |       |       |     |      |       |       |
| Preliminary Drainage Design                                |              |      |               |      |               |       |      |      |              |       |      |      |               |       |       |     |      |       |       |
| Field Check                                                |              |      |               |      |               |       |      |      |              |       |      |      |               |       |       |     |      |       |       |
| City Review of Plans                                       |              |      |               |      |               |       |      |      |              |       |      |      |               |       |       |     |      |       |       |
| Final Design                                               |              |      |               |      |               |       |      |      |              |       |      |      |               |       |       |     |      |       |       |
| Office Check                                               |              |      |               |      |               |       |      |      |              |       |      |      |               |       |       |     |      |       |       |
| Final Plans, Specs, and Estimate                           |              |      |               |      |               |       |      |      |              |       |      |      |               |       |       |     |      |       |       |
| Legal Descriptions and Tract Maps                          |              |      |               |      |               |       |      |      |              |       |      |      |               |       |       |     |      |       |       |
| R/W Acquisitions                                           |              |      |               |      |               |       |      |      |              |       |      |      |               |       |       |     |      |       |       |
| Utility Relocations and Meeting                            |              |      |               |      |               |       |      |      |              |       |      |      |               |       |       |     |      |       |       |
| Construction Letting                                       |              |      |               |      |               |       |      |      |              |       |      |      |               |       |       |     |      |       | ★     |

**REVISED NON-DISCRIMINATION AND  
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM  
REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
  - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
  - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
  - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
  - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
  - 5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
  - 1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
  - 2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
  - 3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be

canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.



**47th Street Widening**  
**Fee Summary and Task Breakout**  
**HNTB JOB NO. 50317**  
**Preliminary and Final Design**

Printed : 10/21/2009

**Task Breakout: Manhours****FEE SUMMARY**

| Direct Labor                         | Manhours   | Total           |
|--------------------------------------|------------|-----------------|
| Task 1 - Preliminary Roadway Design  | 208        | \$7,274         |
| Task 2 - Preliminary Drainage Design | 100        | \$3,420         |
| Task 3 - Final Roadway Design        | 240        | \$8,184         |
| Task 4 - Final Drainage Design       | 80         | \$2,787         |
| Task 5 - Project Coordination        | 76         | \$3,546         |
| Task 6 - Survey Coordination         | 62         | \$2,627         |
| Task 7 - Water Relocation            | 105        | \$4,217         |
| <b>TOTAL DIRECT LABOR</b>            | <b>871</b> | <b>\$32,055</b> |

|                                                |         |                 |
|------------------------------------------------|---------|-----------------|
| Overhead on Direct Labor                       | 155.50% | <u>\$49,845</u> |
| Subtotal Direct Labor and Overhead             |         | \$81,900        |
| Fixed Fee                                      |         | <u>\$12,285</u> |
| Subtotal Direct Labor, Overhead, and Fixed Fee |         | \$94,185        |

| Expenses                                   | Amount   |
|--------------------------------------------|----------|
| Poe and Associates Inc.                    | \$17,810 |
| Professional Engineering Consultants, P.A. | \$1,500  |
| Printing/Plotting/Reproduction             | \$3,845  |
| Travel and Subsistence                     | \$530    |

SUBTOTAL EXPENSES: Interchange \$23,685

**TOTAL** **\$117,870**

**47th Street Widening**  
**Fee Summary and Task Breakout**  
**HNTB JOB NO. 50317**  
**Preliminary and Final Design**

Date Printed : 10/21/2009

|                                             | Hours      | Rate    | Total           |
|---------------------------------------------|------------|---------|-----------------|
| <b>Task 1 - Preliminary Roadway Design</b>  |            |         |                 |
| Project/Department Management               | 18         | \$52.00 | \$936           |
| Senior Engineer                             | 24         | \$43.00 | \$1,032         |
| Junior Engineer                             | 94         | \$35.00 | \$3,290         |
| Technician                                  | 72         | \$28.00 | \$2,016         |
| <b>Subtotal</b>                             | 208        |         | \$7,274         |
| <b>Task 2 - Preliminary Drainage Design</b> |            |         |                 |
| Discipline Management                       | 4          | \$52.00 | \$208           |
| Senior Engineer                             | 13         | \$43.00 | \$559           |
| Junior Engineer                             | 47         | \$35.00 | \$1,645         |
| Technician                                  | 36         | \$28.00 | \$1,008         |
| Clerical                                    | 0          | \$30.00 | \$0             |
| <b>Subtotal</b>                             | 100        |         | \$3,420         |
| <b>Task 3 - Final Roadway Design</b>        |            |         |                 |
| Project/Department Management               | 6          | \$52.00 | \$312           |
| Senior Engineer                             | 32         | \$43.00 | \$1,376         |
| Junior Engineer                             | 120        | \$35.00 | \$4,200         |
| Technician                                  | 82         | \$28.00 | \$2,296         |
| <b>Subtotal</b>                             | 240        |         | \$8,184         |
| <b>Task 4 - Final Drainage Design</b>       |            |         |                 |
| Project/Department Management               | 3          | \$52.00 | \$156           |
| Senior Engineer                             | 13         | \$43.00 | \$559           |
| Junior Engineer                             | 40         | \$35.00 | \$1,400         |
| Technician                                  | 24         | \$28.00 | \$672           |
| <b>Subtotal</b>                             | 80         |         | \$2,787         |
| <b>Task 5 - Project Coordination</b>        |            |         |                 |
| Project/Department Management               | 54         | \$52.00 | \$2,808         |
| Senior Engineer                             | 6          | \$43.00 | \$258           |
| Junior Engineer                             | 0          | \$35.00 | \$0             |
| Technician                                  | 0          | \$28.00 | \$0             |
| Clerical                                    | 16         | \$30.00 | \$480           |
| <b>Subtotal</b>                             | 76         |         | \$3,546         |
| <b>Task 6 - Survey Coordination</b>         |            |         |                 |
| Department Management                       | 4          | \$63.36 | \$253           |
| Land Surveyor                               | 27         | \$50.96 | \$1,376         |
| Engineer                                    | 15         | \$38.00 | \$570           |
| Technician                                  | 16         | \$26.72 | \$428           |
| <b>Subtotal</b>                             | 62         |         | \$2,627         |
| <b>Task 7 - Water Relocation</b>            |            |         |                 |
| Project/Department Management               | 21         | \$57.00 | \$1,197         |
| Senior Engineer/QA                          | 4          | \$61.00 | \$244           |
| Junior Engineer                             | 28         | \$36.00 | \$1,008         |
| Technician                                  | 52         | \$34.00 | \$1,768         |
| Clerical                                    | 0          |         | \$0             |
| <b>Subtotal</b>                             | 105        |         | \$4,217         |
| <b>Totals</b>                               | <b>871</b> |         | <b>\$32,055</b> |

**47th Street Widening**  
**Fee Summary and Task Breakout**  
**HNTB JOB NO. 50317**  
**Preliminary and Final Design**

Date Printed : 10/21/2009

**Task Breakout: Manhours**

| Items                                      |                                                                                                   | Proj.<br>Mgmt. | Senior<br>Engineer | Junior<br>Engineer | Tech      | TOTAL      |
|--------------------------------------------|---------------------------------------------------------------------------------------------------|----------------|--------------------|--------------------|-----------|------------|
| <b>Task 1 - Preliminary Roadway Design</b> |                                                                                                   |                |                    |                    |           |            |
| 1.1                                        | Process Surveys                                                                                   | 0              | 0                  | 0                  | 8         | 8          |
| 1.2                                        | Define Typical Sections                                                                           | 0              | 1                  | 2                  | 2         | 5          |
| 1.3                                        | Develop 47th St geometry                                                                          | 0              | 1                  | 5                  | 4         | 10         |
| 1.4                                        | Develop entrance profiles (design)                                                                | 0              | 1                  | 7                  | 0         | 8          |
| 1.5                                        | Develop intersection layout                                                                       | 0              | 0                  | 10                 | 8         | 18         |
| 1.6                                        | Model footprint of construction                                                                   | 0              | 0                  | 10                 | 0         | 10         |
| 1.7                                        | Develop preliminary R/W                                                                           | 1              | 1                  | 2                  | 2         | 6          |
| 1.8                                        | Develop title sheet                                                                               | 0              | 0                  | 2                  | 4         | 6          |
| 1.9                                        | Develop survey reference sheet                                                                    | 0              | 2                  | 2                  | 4         | 8          |
| 1.10                                       | Prepare preliminary plan & profile sheets                                                         | 0              | 2                  | 4                  | 8         | 14         |
| 1.11                                       | Create profile sheets for entrances                                                               | 0              | 0                  | 8                  | 8         | 16         |
| 1.12                                       | Prepare roadway cross section sheets                                                              | 1              | 0                  | 10                 | 8         | 19         |
| 1.13                                       | Prepare construction sequencing plans (extend construction area/limits of existing phasing plans) |                |                    |                    |           |            |
| 1.13.1                                     | Prepare phasing typical                                                                           | 0              | 2                  | 2                  | 2         | 6          |
| 1.13.2                                     | Prepare phasing plans                                                                             | 0              | 2                  | 2                  | 2         | 6          |
| 1.14                                       | Prepare quantity calculations and estimate                                                        | 2              | 2                  | 8                  | 2         | 14         |
| 1.15                                       | Perform QA/QC review of preliminary plans                                                         | 6              | 0                  | 0                  | 0         | 6          |
| 1.16                                       | Prepare plans for distribution to utilities                                                       | 0              | 0                  | 2                  | 4         | 6          |
| 1.17                                       | Meet with ULCC in Wichita                                                                         | 0              | 8                  | 8                  | 0         | 16         |
| 1.18                                       | Revise plans for field check                                                                      | 0              | 2                  | 2                  | 6         | 10         |
| 1.19                                       | Attend field check meeting                                                                        | 8              | 0                  | 8                  | 0         | 16         |
| <b>SUBTOTAL</b>                            |                                                                                                   | <b>18</b>      | <b>24</b>          | <b>94</b>          | <b>72</b> | <b>208</b> |

**47th Street Widening**  
**Fee Summary and Task Breakout**  
**HNTB JOB NO. 50317**  
**Preliminary and Final Design**

Date Printed :

10/21/2009

**Task Breakout: Manhours**

| Items                                       |                                                                   | Discipline<br>Mgmt. | Senior<br>Engineer | Junior<br>Engineer | Tech | Clerical | TOTAL |
|---------------------------------------------|-------------------------------------------------------------------|---------------------|--------------------|--------------------|------|----------|-------|
| <b>Task 2 - Preliminary Drainage Design</b> |                                                                   |                     |                    |                    |      |          |       |
| 2.1                                         | Collect drainage data                                             | 0                   | 0                  | 4                  | 2    | 0        | 6     |
| 2.2                                         | Prepare survey request for drainage features                      | 0                   | 0                  | 4                  | 2    | 0        | 6     |
| 2.3                                         | Develop drainage area maps                                        | 0                   | 0                  | 4                  | 4    | 0        | 8     |
| 2.4                                         | Calculate pavement drainage spread and<br>determine inlet spacing | 0                   | 2                  | 10                 | 0    | 0        | 12    |
| 2.5                                         | Design closed drainage system inlets                              | 2                   | 2                  | 20                 | 24   | 0        | 48    |
| 2.6                                         | Quality Control/Quality Assurance                                 | 0                   | 8                  | 0                  | 0    | 0        | 8     |
| 2.7                                         | Attend field check meeting                                        | 0                   | 0                  | 0                  | 0    | 0        | 0     |
| 2.8                                         | Revise plans per City's comments                                  | 2                   | 1                  | 5                  | 4    | 0        | 12    |
| Subtotal                                    |                                                                   | 4                   | 13                 | 47                 | 36   | 0        | 100   |

**47th Street Widening**  
**Fee Summary and Task Breakout**  
**HNTB JOB NO. 50317**  
**Preliminary and Final Design**

Date Printed : 10/21/2009

**Task Breakout: Manhours**

| Items                                |                                                                            | Proj. Mgmt. | Senior Engineer | Junior Engineer | Tech      | Total      |
|--------------------------------------|----------------------------------------------------------------------------|-------------|-----------------|-----------------|-----------|------------|
| <b>Task 3 - Final Roadway Design</b> |                                                                            |             |                 |                 |           |            |
| 3.1                                  | Coordinate drainage structure configurations, inlet and outlet treatments. | 0           | 2               | 2               | 0         | 4          |
| 3.2                                  | Develop plans and details for pavement marking                             | 0           | 2               | 4               | 6         | 12         |
| 3.3                                  | Develop signing plans and details                                          | 0           | 2               | 10              | 4         | 16         |
| 3.4                                  | Finalize plan and profile sheets for 47 <sup>th</sup> St.                  | 0           | 2               | 8               | 12        | 22         |
| 3.5                                  | Finalize driveway profiles                                                 | 0           | 0               | 4               | 4         | 8          |
| 3.6                                  | Finalize intersection details at 47th & Lulu                               | 0           | 2               | 2               | 8         | 12         |
| 3.7                                  | Develop joint plans                                                        | 0           | 2               | 6               | 4         | 12         |
| 3.8                                  | Develop general details                                                    | 0           | 2               | 2               | 4         | 8          |
| 3.9                                  | Finalize cross sections                                                    | 0           | 0               | 14              | 8         | 22         |
| 3.10                                 | Design Curb Returns (one intersection)                                     | 0           | 0               | 12              | 4         | 16         |
| 3.11                                 | Erosion Control/Seeding Plans                                              | 0           | 2               | 4               | 4         | 10         |
| 3.12                                 | Finalize plans and details for traffic control                             | 1           | 2               | 6               | 4         | 13         |
| 3.13                                 | Perform earthwork calculations and quantities                              | 1           | 2               | 16              | 0         | 19         |
| 3.14                                 | Perform quantity calculation and prepare schedules                         | 0           | 2               | 8               | 8         | 18         |
| 3.15                                 | Perform QA/QC review of Office Check plans                                 | 2           | 4               | 0               | 0         | 6          |
| 3.16                                 | Prepare Office Check plans                                                 | 0           | 2               | 4               | 4         | 10         |
| 3.17                                 | Revise plans based on office check comments                                | 0           | 2               | 6               | 4         | 12         |
| 3.18                                 | Prepare specifications and special provisions                              | 1           | 0               | 2               | 0         | 3          |
| 3.19                                 | Update construction cost estimate                                          | 1           | 2               | 6               | 0         | 9          |
| 3.20                                 | Prepare full and half size final plans and specifications                  | 0           | 0               | 4               | 4         | 8          |
| <b>SubTotal</b>                      |                                                                            | <b>6</b>    | <b>32</b>       | <b>120</b>      | <b>82</b> | <b>240</b> |

**47th Street Widening**  
**Fee Summary and Task Breakout**  
**HNTB JOB NO. 50317**  
**Preliminary and Final Design**

Date Printed : 10/21/2009

**Task Breakout: Manhours**

| Items                                 |                                   | Proj. Mgmt. | Senior Engineer | Junior Engineer | Tech      | Total     |
|---------------------------------------|-----------------------------------|-------------|-----------------|-----------------|-----------|-----------|
| <b>Task 4 - Final Drainage Design</b> |                                   |             |                 |                 |           |           |
| 4.1                                   | Develop temporary drainage        | 0           | 2               | 8               | 0         | 10        |
| 4.2                                   | Finalize pipe profiles            | 0           | 2               | 12              | 12        | 26        |
| 4.3                                   | Prepare quantities                | 0           | 1               | 4               | 2         | 7         |
| 4.4                                   | Maintain drainage area maps       | 0           | 0               | 2               | 2         | 4         |
| 4.5                                   | Quality Control/Quality Assurance | 1           | 4               | 0               | 0         | 5         |
| 4.6                                   | Prepare Office Check plans        | 2           | 2               | 10              | 4         | 18        |
| 4.7                                   | Respond to Office Check comments  | 0           | 2               | 4               | 4         | 10        |
|                                       |                                   |             |                 |                 |           |           |
|                                       |                                   |             |                 |                 |           |           |
|                                       |                                   |             |                 |                 |           |           |
| <b>SubTotal</b>                       |                                   | <b>3</b>    | <b>13</b>       | <b>40</b>       | <b>24</b> | <b>80</b> |

47th Street Widening  
Fee Summary and Task Breakout  
HNTB JOB NO. 50317  
Preliminary and Final Design

Date Printed : 10/21/2009

**Task Breakout: Manhours**

| Items                                |                                              | Proj. Mgmt. | Senior Engineer | Junior Engineer | Tech     | Clerical  | Total     |
|--------------------------------------|----------------------------------------------|-------------|-----------------|-----------------|----------|-----------|-----------|
| <b>Task 5 - Project Coordination</b> |                                              |             |                 |                 |          |           |           |
| 5.1                                  | Project management                           | 28          | 0               | 0               | 0        | 0         | 28        |
| 5.2                                  | Monthly project meetings (assume 3)          | 6           | 6               | 0               | 0        | 0         | 12        |
| 5.3                                  | Quality Assurance/Subconsultant Coordination | 12          | 0               | 0               | 0        | 0         | 12        |
| 5.4                                  | Project reporting                            | 8           | 0               | 0               | 0        | 16        | 24        |
| <b>SubTotal</b>                      |                                              | <b>54</b>   | <b>6</b>        | <b>0</b>        | <b>0</b> | <b>16</b> | <b>76</b> |

47th Street Widening  
Fee Summary and Task Breakout  
HNTB JOB NO. 50317  
Preliminary and Final Design

Date Printed : 10/21/2009

**Task Breakout: Manhours**

| Items                               |                                | Dept. Mgr. | L.S.      | Engineer  | Tech      | Total     |
|-------------------------------------|--------------------------------|------------|-----------|-----------|-----------|-----------|
| <b>Task 6 - Survey Coordination</b> |                                |            |           |           |           |           |
| 6.1                                 | Project Set-up                 | 2          | 2         | 1         | 0         | 5         |
| 6.2                                 | Calculate Dimensions and Areas | 0          | 10        | 4         | 0         | 14        |
| 6.3                                 | Legal Descriptions             | 0          | 10        | 5         | 0         | 15        |
| 6.4                                 | Tract Maps                     | 0          | 5         | 5         | 16        | 26        |
| 6.5                                 | Quality Control                | 2          | 0         | 0         | 0         | 2         |
| <b>SubTotal</b>                     |                                | <b>4</b>   | <b>27</b> | <b>15</b> | <b>16</b> | <b>62</b> |



**47th Street Extension Lulu to Hydraulic Street**  
**Fee Summary and Task Breakout**  
**HNTB JOB NO. 50317**  
**Preliminary and Final Design**

Date Printed :

10/21/2009

**Task Breakout: Manhours**

| Items                            |                                  | Discipline<br>Mgmt. | Senior<br>Engineer<br>/QA | Junior<br>Engineer | Tech      | Clerical | TOTAL      |
|----------------------------------|----------------------------------|---------------------|---------------------------|--------------------|-----------|----------|------------|
| <b>Task 7 - Water Relocation</b> |                                  |                     |                           |                    |           |          |            |
| 7.1                              | Concept Drawing & review         | 2                   | 0                         | 8                  | 16        | 0        | 26         |
| 7.2                              | Preliminary Design               | 0                   | 0                         | 4                  | 8         | 0        | 12         |
| 7.3                              | Design review                    | 2                   | 0                         | 0                  | 0         | 0        | 2          |
| 7.4                              | Field Check Drawings             | 2                   | 0                         | 0                  | 16        | 0        | 18         |
| 7.5                              | Attend Field Check Meeting       | 10                  | 0                         | 0                  | 0         | 0        | 10         |
| 7.6                              | Office Check Drawings            | 1                   | 0                         | 0                  | 8         | 0        | 9          |
| 7.7                              | Revise plans per City's comments | 1                   | 0                         | 0                  | 4         | 0        | 5          |
| 7.8                              | Specifications                   | 1                   | 0                         | 8                  | 0         | 0        | 9          |
| 7.9                              | Cost Estimate                    | 1                   | 0                         | 8                  | 0         | 0        | 9          |
| 7.10                             | Quality Review                   | 1                   | 4                         | 0                  | 0         | 0        | 5          |
| <b>Subtotal</b>                  |                                  | <b>21</b>           | <b>4</b>                  | <b>28</b>          | <b>52</b> | <b>0</b> | <b>105</b> |

**47th Street Widening**  
**Fee Summary and Task Breakout**  
**HNTB JOB NO. 50317**  
**Preliminary and Final Design**

**DIRECT EXPENSES**

**Travel and Subsistence :**

|         |                                          |              |
|---------|------------------------------------------|--------------|
| Mileage | Assume 2 trips to Job Site X 400 miles   | <b>\$440</b> |
| Meals   | 1 meal x 3 persons x 2 trips x \$15/meal | <b>\$90</b>  |
| Lodging | None assumed                             | <b>\$0</b>   |
|         | <b>Subtotal</b>                          | <b>\$530</b> |

**Reproduction :**

**Submittals**

|               |                                                                        |         |
|---------------|------------------------------------------------------------------------|---------|
| Field Check   | Assume 4 B/W half size prints per sht @ \$ 2.00 per print x 45 sheets  | \$360   |
| Utility Plans | Assume 15 color half-size plots @ \$6 per sheet x 3 shts               | \$270   |
| Office Check  | Assume 5 B/W half size prints per sht @ \$ 2.00 per print x 100 sheets | \$1,000 |
| PS&E          | Assumes 1 full size set @ \$6.00 per print x 45 sheets                 | \$270   |
|               | Assume 5 B/W half size prints per sht @ \$ 2.00 per print x 45 sheets  | \$450   |
| HNTB          | Assume 20 half-size check sets @ \$ 0.25 per copy x 45 sheets          | \$225   |
| HNTB          | 3 half size Record sets - assume \$ 2.00 per sht.x 45                  | \$270   |

Reproduction expenses per sheet = \$2,845

Miscellaneous reproduction = **\$2,845**  
**\$1,000**

**Total Estimated Direct Expenses**

**\$4,375**



**POE & ASSOCIATES, INC.**

**CONSULTING ENGINEERS**

5940 E. Central, Suite 200  
Wichita, Kansas 67208

(316) 685-4114  
FAX: (316) 685-4444

September 28, 2009

Ms. Barbara L. Friedman, P.E.  
Project Manager  
**HNTB Corporation**  
715 Kirk Drive  
Kansas City, MO 64105

Re: 47<sup>th</sup> Street South, Lulu to Hydraulic

Dear Ms Friedman:

We propose to provide the following survey services on this project. Storm sewer structure size, shape, material, elevations and orientation. Storm sewer pipe size, material, and elevation. Sanitary sewer manholes with elevations. Waterline locations with pipe material and size from record information. Communication cables and duct banks as identified by their owners. Overhead power lines and poles. Underground power lines as identified by their owners. Other utilities contacted by the "one call" system and identified by their owners. Establish existing centerline of 47<sup>th</sup> Street and Hydraulic. Survey right-of-way control points for 47<sup>th</sup> Street, Hydraulic and side streets between Lulu and Hydraulic. Survey pavement tie-in point. The deliverables will be a Survey base drawing and copies of all field notes. The base drawing will include right-of-way lines for 47<sup>th</sup> Street and side streets entering 47<sup>th</sup> Street and property lines for properties adjacent to 47<sup>th</sup> Street. Certificates of Title prepared by a local title company will be provided for properties adjacent to 47<sup>th</sup> Street from Lulu to one lot east of Hydraulic. Right-of-way staking between Broadway and the Riverside Drainage Ditch for utility relocation work is included in the proposal.

Yours truly,

POE & ASSOCIATES, INC.

  
Bill Fox, L.S.

Page 1 of 2

## Lulu to Hydraulic

| Item                                                               | ManHours | Title       | Rate | Total        |
|--------------------------------------------------------------------|----------|-------------|------|--------------|
| Storm Sewer Structures                                             | 8        | 3 man crew  | 230  | 1840         |
| Storm Sewer Pipes                                                  | 8        | 3 man crew  | 230  | 1840         |
| Centerlines and Right-of-way control points                        | 16       | 3 man crew  | 230  | 3680         |
| Survey Utilities (telephone, gas, electric, water, san. Sewer etc) | 8        | 2 man crew  | 165  | 1320         |
| Tie-in point elevations                                            | 8        | 2 man crew  | 165  | 1320         |
| organize and submit notes to KDOT                                  | 16       | survey tech | 75   | 1200         |
| Data Processing Base Map drafting                                  | 16       | survey tech | 95   | 1520         |
| Right-of-way and property line drafting                            | 16       | survey tech | 75   | 1200         |
| Certificate of title for adjacent properties (19 properties)       |          |             | 150  | 2850         |
| Stake-out data creation for City of Wichita R/W staking            | 4        | survey tech | 95   | 380          |
| R/W staking for City of Wichita                                    | 4        | 2 man crew  | 165  | 660          |
| <b>TOTAL</b>                                                       |          |             |      | <b>17810</b> |

47<sup>th</sup> St Widening Lulu to Hydraulic

HNTB Project No. 50317

City of Wichita Project No. 472 84872

Professional Engineering Consultants, P.A.

Scope and Fee for Engineering Services

10/21/2009

Scope

- PEC will provide a quality review of waterline relocation design plans provided by HNTB electronically in PDF format.
- PEC will mark up plans and provide review comments and scan and return to HNTB electronically in PDF format.
- PEC will provide phone consultation to HNTB regarding standard City of Wichita waterline plans format, details, and expectations.

Fee

PEC will perform the aforementioned work for a lump sum amount of \$1,500.

Deliverables

- PEC will provide HNTB with an example set of waterline drawings designed to City of Wichita standards and specifications upon receipt of Notice to Proceed.
- PEC will provide review comments and marked plans.

47<sup>th</sup> St Widening Lulu to Hydraulic

HNTB Project No. 50317

City of Wichita Project No. 472 84872

Professional Engineering Consultants, P.A.

Schedule of Engineering Services

10/21/2009

Work performed by Professional Engineering Consultants, P.A. shall not begin prior to City of Wichita Notice to Proceed date of Oct. 19, 2009.

All work referenced in the Professional Engineering Consultants Scope of Services dated Oct. 21, 2009 for the 47<sup>th</sup> St Widening Lulu to Hydraulic Project shall be completed in a timely manner. An example set of waterline drawings performed to City of Wichita specifications will be provided to HNTB no later than November 20<sup>th</sup>, 2009. Plan review and transmittal of marked-up drawings shall be provided by PEC within one calendar week of receiving the drawings from HNTB. Overall project schedule will vary, but work performed by PEC will be completed no later than February 28<sup>th</sup>, 2010.

City of Wichita  
City Council Meeting  
November 17, 2009

**TO:** Mayor and City Council

**SUBJECT:** Pump Station No. 11 (District VI)

**INITIATED BY:** Department of Public Works

**AGENDA:** New Business

-----

**Recommendation:** Approve the budget increase.

**Background:** The structure under the levee of the Wichita Valley Center Flood Control south of the intersection of 37<sup>th</sup> Street North and Woodrow does not allow the area behind the levee to drain when the Little Arkansas River is being diverted through the flood control system. This happens on average, several times a year causing Flood Control and Stormwater staff to regularly monitor this location during rain events to prevent flooding in the Sherwood Glenn neighborhood. During major storm events, staff is required to mobilize three temporary pumps to dewater the ponding area caused by the upstream 470-acre drainage basin.

On February 5, 2008, the City Council approved a contract with Cook, Flatt and Strobel (CFS) to design the permanent pump station to reduce neighborhood flooding and allow staff greater flexibility to respond to other flooding concerns throughout the City.

**Analysis:** CFS has completed the design for the new pump station. Staff has reviewed the plans and has determined that the completed pump station will provide the needed drainage improvements for this existing residential area. Staff determined that right-of-way acquisition was not needed in this project.

**Financial Considerations:** The current approved budget is \$750,000, which was established for design and right-of-way acquisitions. The proposed revised budget will increase by \$5,050,000, for a total of \$5,800,000. This project is listed in the proposed 2009-2018 Capital Improvement Program (CIP), which has been brought forward since the 2000 CIP. Funding for the project will come from the storm water utility.

**Goal Impact:** The project will help to provide a Safe and Secure Community by reducing potential flood losses.

**Legal Considerations:** The resolution has been approved as to form by the Law Department.

**Recommendations/Actions:** It is recommended the City Council approve the budget increase, adopt the resolution and authorize the necessary signatures.

**Attachments:** Resolution and CIP sheet.

|                                                                                              |                                              |                                                                 |                                                                                                      |                                                                                                                                                 |                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                          |  |
|----------------------------------------------------------------------------------------------|----------------------------------------------|-----------------------------------------------------------------|------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <b>CAPITAL IMPROVEMENT</b><br><br><b>PROJECT AUTHORIZATION</b><br><br><b>CITY OF WICHITA</b> |                                              |                                                                 |                                                                                                      | USE:<br>To Initiate Project <input style="width: 50px;" type="text"/><br>To Revise Project <input checked="" style="width: 50px;" type="text"/> |                                                                                                                                                                                                                                                                                                            | 1. Prepare in triplicate<br>2. Send original & 2 copies to budget.<br>3. City Manager to sign all copies.<br>4. File original w/ initiating resolution in City Clerk.<br>5. Return 2nd copy to initiating department.<br>6. Send 3rd copy to Controller. |  |
| <b>1. Initiating Department</b><br>Public Works                                              | <b>2. Initiating Division</b><br>Storm Water | <b>3. Date</b><br>11/17/2009                                    | <b>4. Project Description &amp; Location</b><br>Stormwater Pump Station Number 11 (37th and Woodrow) |                                                                                                                                                 |                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                          |  |
| <b>5. CIP Project Number</b><br>468-84477                                                    | <b>6. Accounting Number</b>                  | <b>7. CIP Project Date (Year)</b><br>2009                       |                                                                                                      | <b>8. Approved by WCC Date</b>                                                                                                                  |                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                          |  |
| <b>9. Estimated Start Date</b><br>November 30, 2009                                          | <b>10. Estimated Completion Date</b>         |                                                                 | <b>11. Project Revised</b>                                                                           |                                                                                                                                                 |                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                          |  |
| <b>12. Project Cost Estimate</b>                                                             |                                              |                                                                 |                                                                                                      | <b>12A.</b>                                                                                                                                     |                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                          |  |
| <b>ITEM</b>                                                                                  | <b>GO</b>                                    | <b>SA</b>                                                       | <b>OTHER *</b>                                                                                       | <b>TOTAL</b>                                                                                                                                    | <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <b>Yes</b><br/> <input style="width: 50px; height: 20px;" type="text"/> </div> <div style="text-align: center;"> <b>No</b><br/> <input style="width: 50px; height: 20px;" type="text"/> </div> </div>        |                                                                                                                                                                                                                                                          |  |
| Right of Way                                                                                 |                                              |                                                                 |                                                                                                      |                                                                                                                                                 | <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <b>Platting Required</b><br/> <input style="width: 50px; height: 20px;" type="text"/> </div> <div style="text-align: center;"> <input style="width: 50px; height: 20px;" type="text"/> </div> </div>         |                                                                                                                                                                                                                                                          |  |
| Paving, grading & const.                                                                     |                                              |                                                                 |                                                                                                      |                                                                                                                                                 | <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <b>Lot Split</b><br/> <input style="width: 50px; height: 20px;" type="text"/> </div> <div style="text-align: center;"> <input style="width: 50px; height: 20px;" type="text"/> </div> </div>                 |                                                                                                                                                                                                                                                          |  |
| Bridge & Culverts                                                                            |                                              |                                                                 |                                                                                                      |                                                                                                                                                 | <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <b>Petition</b><br/> <input style="width: 50px; height: 20px;" type="text"/> </div> <div style="text-align: center;"> <input style="width: 50px; height: 20px;" type="text"/> </div> </div>                  |                                                                                                                                                                                                                                                          |  |
| Drainage, design & const.                                                                    | \$5,800,000                                  |                                                                 |                                                                                                      | \$5,800,000                                                                                                                                     | <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <b>Ordered by WCC</b><br/> <input checked="" style="width: 50px; height: 20px;" type="text"/> </div> <div style="text-align: center;"> <input style="width: 50px; height: 20px;" type="text"/> </div> </div> |                                                                                                                                                                                                                                                          |  |
| Sanitary Sewer                                                                               |                                              |                                                                 |                                                                                                      |                                                                                                                                                 | <b>Remarks:</b><br><br>GO Bonds are to be repaid by the City's Storm Water Utility.                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                          |  |
| Sidewalk                                                                                     |                                              |                                                                 |                                                                                                      |                                                                                                                                                 |                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                          |  |
| Water                                                                                        |                                              |                                                                 |                                                                                                      |                                                                                                                                                 |                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                          |  |
| Railroad                                                                                     |                                              |                                                                 |                                                                                                      |                                                                                                                                                 |                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                          |  |
| <b>Totals</b>                                                                                | \$5,800,000                                  |                                                                 |                                                                                                      | \$5,800,000                                                                                                                                     |                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                          |  |
| <b>Total CIP Amount Budgeted</b>                                                             | \$5,800,000                                  |                                                                 |                                                                                                      | \$5,800,000                                                                                                                                     |                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                          |  |
| <b>Total Prelim. Estimate</b>                                                                |                                              |                                                                 |                                                                                                      |                                                                                                                                                 |                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                          |  |
| <b>13. Recommendation:</b> approve the project and place the ordinance on 1st reading        |                                              |                                                                 |                                                                                                      |                                                                                                                                                 |                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                          |  |
| <b>Division Head</b><br><br><div style="height: 40px;"></div>                                |                                              | <b>Department Head</b><br><br><div style="height: 40px;"></div> |                                                                                                      | <b>Budget Officer</b><br><br><div style="height: 40px;"></div>                                                                                  |                                                                                                                                                                                                                                                                                                            | <b>City Manager</b><br><br><div style="height: 40px;"></div>                                                                                                                                                                                             |  |
| <b>Date</b>                                                                                  |                                              | <b>Date</b>                                                     |                                                                                                      | <b>Date</b>                                                                                                                                     |                                                                                                                                                                                                                                                                                                            | <b>Date</b>                                                                                                                                                                                                                                              |  |



First Published in the Wichita Eagle on November 20, 2009

RESOLUTION NO. 09-362

A RESOLUTION AUTHORIZING THE ISSUANCE OF BONDS BY THE CITY OF  
WICHITA AT LARGE FOR PUMP STATION #11 CONSTRUCTION (468-84477)

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS;

SECTION 1. That the City of Wichita desires to construct a storm water pump station near the intersection of 37<sup>th</sup> Street North and Woodrow. Resolution No. 08-844 published on February 8, 2008 is hereby rescinded and replaced with current Resolution.

SECTION 2. That the cost of said stormwater pump station for the above-described improvements are estimated to be \$5,800,000 exclusive of the cost of interest on borrowed money. Said cost, when ascertained, shall be borne by the City of Wichita at large by the issuance of general obligation bonds.

SECTION 3. That the advisability of said improvements is established as authorized by K.S.A. 13-1024c and City of Wichita Charter Ordinance No. 156.

SECTION 4. That this Resolution shall take effect and be in force from and after its passage and shall be published in the official City paper.

ADOPTED at Wichita, Kansas, November 17, 2009.

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CARL BREWER, MAYOR

ATTEST:

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KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED:

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GARY REBENSTORF, DIRECTOR OF LAW

# CAPITAL IMPROVEMENT

## PROJECT AUTHORIZATION

### CITY OF WICHITA

USE:

To Initiate Project  

To Revise Project X

1. Prepare in triplicate
2. Send original & 2 copies to budget.
3. City Manager to sign all copies.
4. File original w/ initiating resolution in City Clerk.
5. Return 2nd copy to initiating department.
6. Send 3rd copy to Controller.

|                                              |                                       |                                    |                                                                                           |
|----------------------------------------------|---------------------------------------|------------------------------------|-------------------------------------------------------------------------------------------|
| 1. Initiating Department<br>Public Works     | 2. Initiating Division<br>Storm Water | 3. Date<br>11/17/2009              | 4. Project Description & Location<br>Stormwater Pump Station Number 11 (37th and Woodrow) |
| 5. CIP Project Number<br>468-84477           | 6. Accounting Number                  | 7. CIP Project Date (Year)<br>2009 | 8. Approved by WCC Date                                                                   |
| 9. Estimated Start Date<br>November 30, 2009 | 10. Estimated Completion Date         |                                    |                                                                                           |
| 11. Project Revised                          |                                       |                                    |                                                                                           |

| 12. Project Cost Estimate |             |    |         | 12A.        |                                                                                                                                                                                                          |
|---------------------------|-------------|----|---------|-------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ITEM                      | GO          | SA | OTHER * | TOTAL       |                                                                                                                                                                                                          |
| Right of Way              |             |    |         |             | Yes <span style="border: 1px solid black; display: inline-block; width: 30px; height: 15px;"></span> No <span style="border: 1px solid black; display: inline-block; width: 30px; height: 15px;"></span> |
| Paving, grading & const.  |             |    |         |             | Yes <span style="border: 1px solid black; display: inline-block; width: 30px; height: 15px;"></span> No <span style="border: 1px solid black; display: inline-block; width: 30px; height: 15px;"></span> |
| Bridge & Culverts         |             |    |         |             | Yes <span style="border: 1px solid black; display: inline-block; width: 30px; height: 15px;"></span> No <span style="border: 1px solid black; display: inline-block; width: 30px; height: 15px;"></span> |
| Drainage, design & const. | \$5,800,000 |    |         | \$5,800,000 | Yes <span style="border: 1px solid black; display: inline-block; width: 30px; height: 15px;"></span> No <span style="border: 1px solid black; display: inline-block; width: 30px; height: 15px;"></span> |
| Sanitary Sewer            |             |    |         |             | Yes <span style="border: 1px solid black; display: inline-block; width: 30px; height: 15px;"></span> No <span style="border: 1px solid black; display: inline-block; width: 30px; height: 15px;"></span> |
| Sidewalk                  |             |    |         |             | Yes <span style="border: 1px solid black; display: inline-block; width: 30px; height: 15px;"></span> No <span style="border: 1px solid black; display: inline-block; width: 30px; height: 15px;"></span> |
| Water                     |             |    |         |             | Yes <span style="border: 1px solid black; display: inline-block; width: 30px; height: 15px;"></span> No <span style="border: 1px solid black; display: inline-block; width: 30px; height: 15px;"></span> |
| Railroad                  |             |    |         |             | Yes <span style="border: 1px solid black; display: inline-block; width: 30px; height: 15px;"></span> No <span style="border: 1px solid black; display: inline-block; width: 30px; height: 15px;"></span> |
| Totals                    | \$5,800,000 |    |         | \$5,800,000 |                                                                                                                                                                                                          |
| Total CIP Amount Budgeted | \$5,800,000 |    |         | \$5,800,000 |                                                                                                                                                                                                          |
| Total Prelim. Estimate    |             |    |         |             |                                                                                                                                                                                                          |

Remarks:

GO Bonds are to be repaid by the City's Storm Water Utility.

13. Recommendation: approve the project and place the ordinance on 1st reading

|                   |                     |                    |                  |
|-------------------|---------------------|--------------------|------------------|
| Division Head<br> | Department Head<br> | Budget Officer<br> | City Manager<br> |
| Date              | Date                | Date               | Date             |

City of Wichita  
City Council Meeting  
November 17, 2009

**TO:** Mayor and City Council

**SUBJECT:** Downtown Parking Lot and Transit Info Signage Proposal (District I)

**INITIATED BY:** Wichita Transit

**AGENDA:** New Business

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**Recommendation:** Direct staff to develop a comprehensive plan for downtown parking lot and transit informational signage.

**Background:** On September 11, 2009 the Transit Advisory Board passed a motion (7-3) to recommend the City Council consider using Federal Transit Administration capital funds to implement a sign system that provides downtown parking lot and transit service information. The proposed system would support both downtown arena parking efforts and transit use. The signs would provide the number of parking spaces available and the next bus arrival time to each lot location included in the proposal.

**Analysis:** The proposed parking/transit sign program would augment the parking lot sign program currently scheduled to be implemented at the four city lots closest to the Intrust Bank Arena. The lots that are proposed for signage have not been identified but would need to be served by the existing downtown Q-Line route to qualify for federal transit funding.

The first step would be for the City Council to authorize staff to develop a plan for the proposed signage. The City's Parking Coordinator and Transit Director would work with other staff members, the Transit Advisory Board and outside resources to develop this plan. Once the plan is developed, a grant application must be submitted to the FTA for funding. Then a competitive procurement process that meets federal procurement guidelines must be undertaken.

**Financial Considerations:** The proposal presented to the Transit Advisory Board calls for the use of up to \$400,000 of FTA unobligated capital funds (previously planned for vehicle replacement) and will require a local match of \$100,000 (20% of project costs). The current Transit budget does not have sufficient funding for the match; however, staff will continue to review possible cost savings that could be directed to this project. The cost per lot for the system has not yet been determined but initial indications are that costs could exceed \$250,000 per location depending on the type of lot (garage versus surface parking). The plan will help to define both the number of lots that can be signed and the best locations for signage.

**Goal Impact:** To ensure efficient infrastructure and optimizing use of public facilities and assets.

**Legal Consideration:** The City Council must approve a grant application to the Federal Transit Administration for this proposed project once the scope of the project and costs have been determined.

**Recommendations/Actions:** Direct staff to develop a plan for additional downtown parking lot and transit informational signage to be integrated with the existing parking lot sign network using unobligated FTA capital funds.

**City of Wichita**  
**City Council Meeting**  
November 17, 2009

**TO:** Mayor and City Council

**SUBJECT:** ZON2009-00029 – Request City zone change from GO General to LC Limited Commercial, generally located south of 13th Street North and east of Cleveland Avenue (1332 N. Cleveland Avenue). (District I)

**INITIATED BY:** Metropolitan Area Planning Department

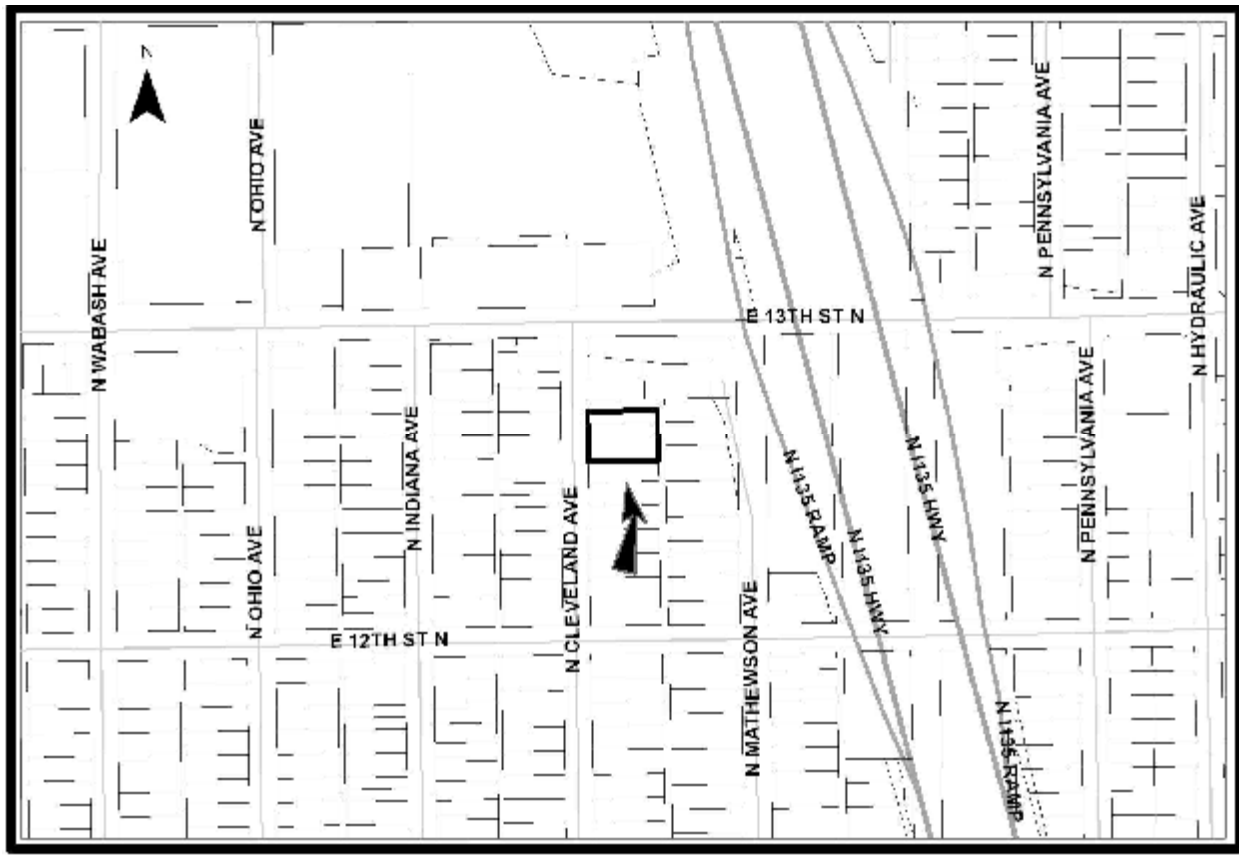
**AGENDA:** Planning (Non-Consent)

---

**MAPC Recommendation:** Approve (12-0).

**MAPD Staff Recommendation:** Approve.

**DAB Recommendation:** Approve subject to adding a protective overlay (10-0).



**Background:** This is a request for a zone change from GO General Office (“GO”) to LC Limited Commercial (“LC”) located south of 13th Street North and east of Cleveland Avenue (1332 N. Cleveland Avenue). The applicant/lessee wishes to convert the west half of the building into a restaurant. Currently, the east half of the building is the office associated with used car sales on property zoned GC General Commercial (“GC”) located between the office building and 13<sup>th</sup> Street North. The GC and GO tracts are in the same ownership. The GO zoning was established in 1997 when the property was rezoned from B Multi-Family Residential (“B”) to GO and the triplex on the site was converted to office use.

A garage is located to the northeast on property zoned GC. The garage is used as part of the car sales operation. Single-family residences are located to the east on property zoned LC and SF-5 Single-Family Residential (“SF-5”). A single-family residence, on property zoned SF-5, adjoins the south property line. Vacant land zoned B and GC is located west of Cleveland Avenue. McAdams Park is located to the north of 13<sup>th</sup> Street, and the 13<sup>th</sup> Street and I-135 interchange is located a block to the east of the site.

**Analysis:** At the MAPC meeting held October 8, 2009, the MAPC voted (12-0) to approve. No citizens were present to speak on the case. At the District I Advisory Board meeting held October 12, 2009, board members asked questions about the intensity of uses permitted in LC zoning. The DAB board voted (10-0) to approve the request subject to adding a protective overlay that would not allow for payday loans, liquor stores or clubs to be opened at this site, should the restaurant be closed.

No protests have been received.

**Financial Considerations:** None.

**Goal Impact:** Promote Economic Vitality and Affordable Living.

**Legal Considerations:** The ordinance has been reviewed and approved as to form by the Law Department.

**Recommendation/Actions:**

1. Concur with the findings of the MAPC and approve the zone change; place the ordinance on first reading.
2. Return the application to the MAPC for reconsideration.
3. Modify the request by the addition of a protective overlay as recommended by DAB I that prohibits liquor stores, offices that accept paychecks or car titles as security for loans and prohibits the sale of alcoholic liquor for consumption on premises.  
(An override of the Planning Commission's recommendation requires a two-third majority vote of the City Council on the first hearing.)

ORDINANCE NO. 48-560

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY  
OF THE CITY OF WICHITA, KANSAS.

**SECTION 1.** That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

**Case No. ZON2009-00029**

Zone change from GO General Office ("GO") to LC Limited Commercial ("LC") on property described as:

The South 4 feet of Lot 13, all of Lots 15, 17 and 19 and the North 7 feet of Lot 21 and Lot 11 and the North 21 feet of Lot 13, Granville Park Addition to Wichita, Sedgwick County, Kansas, generally located south of 13th Street North and east of Cleveland Avenue (1332 N. Cleveland Avenue).

**SECTION 2.** That upon the taking effect of this ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita -Sedgwick County Unified Zoning Code as amended.

**SECTION 3.** That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

**ADOPTED AT WICHITA, KANSAS,** \_\_\_\_\_

\_\_\_\_\_  
Carl Brewer - Mayor

**ATTEST:**

\_\_\_\_\_  
Karen Sublett, City Clerk

(SEAL)

Approved as to form:

---

Gary E. Rebenstorf, City Attorney



---

INTEROFFICE MEMORANDUM

---

**TO:** Wichita City Council  
MAPC Members

**FROM:** LaShonda Porter, Neighborhood Assistant, District 1

**SUBJECT:** ZON2009-00029

**DATE:** October 12, 2009

On Monday, October 12<sup>th</sup>, the *District Advisory Board (DAB) for Council District 1* considered a request for a zone change from general office to limited commercial at the location south of 13th Street North and east of Cleveland Avenue (1332 N. Cleveland Avenue) to allow for the opening of a restaurant.

DAB members requested clarification on what could be opened at this site if the zone request was approved. Expressed concerns with the site being turned into a club at a later time if restaurant was not successful.

**DAB members voted 10-0 to approve the zoning request with a protective overlay that would not allow for payday loans, liquor stores, or clubs to be opened at this site, should restaurant be closed.**

Please review this information when this request is considered.



## EXCERPT OF THE OCTOBER 8, 2009, MAPC HEARING

**Case No.: ZON2009-00029** - 21<sup>st</sup> Century Motors Inc. and Consolidated Property Clifton F. Rolfe (owner); Melvin Watson (lessee/applicant), requested a City zone change from GO General Office to Limited Commercial for a restaurant on property described as:  
The South 4 feet of Lot 13, all of Lots 15, 17 and 19 and the North 7 feet of Lot 21 and Lot 11 and the North 21 feet of Lot 13, Granville Park Addition to Wichita, Sedgwick County, Kansas, generally located south of 13th Street and east of Cleveland Avenue (1332 N. Cleveland Avenue).

**BACKGROUND:** This is a request for a zone change from GO General Office (“GO”) to LC Limited Commercial (“LC”) located south of 13th Street North and east of Cleveland Avenue (1332 N. Cleveland Avenue). The applicant/lessee wishes to convert the west half of the building into a restaurant. Currently the east half of the building is the office associated with used car sales on property zoned GC General Commercial (“GC”) located between the office building and 13<sup>th</sup> Street North. The GC and GO tracts are in the same ownership. The GO zoning was established in 1997 when the property was rezoned from B Multi-Family Residential (“B”) to GO and the tri-plex on the site was converted to office use.

A garage is located to the northeast on property zoned GC. The garage is used as part of the car sales operation. Single-family residences are located to the east on property zoned LC and SF-5 Single-Family Residential (“SF-5”). A single-family residence, on property zoned SF-5, adjoins the south property line. Vacant land zoned B and GC is located west of Cleveland Avenue. McAdams Park is located to the north of 13<sup>th</sup> Street, and the 13<sup>th</sup> and I-135 interchange is located a block to the east of the site.

**CASE HISTORY:** The property is platted as Lots 13, 15, 17, 19 and the north seven feet of Lot 21, Granville Park Addition, recorded April 20, 1887. The property was zoned GO in 1997 (Z-3235, approved June 9, 1997) when the other portion was developed with a car lot.

### **ADJACENT ZONING AND LAND USE:**

|        |          |                                   |
|--------|----------|-----------------------------------|
| NORTH: | GC, SF-5 | Vehicle sales, park               |
| SOUTH: | SF-      | Single-family residential         |
| EAST:  | LC, SF-5 | Garage, single-family residential |
| WEST:  | B, GC    | Vacant                            |

**PUBLIC SERVICES:** The subject property has direct access onto Cleveland Avenue, an urban collector street. Traffic from Cleveland must go east at 13<sup>th</sup> Street North due to the divided median. Westbound traffic must circulate south to 12<sup>th</sup> Street North before heading west.

**CONFORMANCE TO PLANS/POLICIES:** The “2030 Wichita Functional Land Use Guide, as amended May 2005” of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for “local commercial.” The McAdams Neighborhood Revitalization Plan includes this property in the 13<sup>th</sup> Street corridor for neighborhood business startups (Goal 8.3). This request is in conformance with the comprehensive and the neighborhood revitalization plan. Landscape buffering, solid screening, and compatibility setbacks and standards are required from the residential property to the south and the east to mitigate impact of commercial use on the adjoining residences.

**RECOMMENDATION:** Based upon this information available prior to the public hearings, planning staff recommends that the request be APPROVED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Currently the east half of the building is the office associated with used car sales on property zoned GC located between the office building and 13<sup>th</sup> Street North. The GC and GO tracts are in the same ownership. The GO zoning was established in 1997 when the property was rezoned from B to GO and the tri-plex on the site was converted to office use. A garage is located to the northeast on property zoned GC. The garage is part of the car sales operation. Single-family residences are located to the east on property zoned LC and SF-5. A single-family residence, on property zoned SF-5, adjoins the south property line. Vacant land zoned B and GC is located west of Cleveland Avenue. McAdams Park is located to the north of 13<sup>th</sup> Street, and the 13<sup>th</sup> and I-135 interchange is located a block to the east of the site.
2. The suitability of the subject property for the uses to which it has been restricted: The subject property is suited for commercial uses allowed by GO zoning.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The rezoning to LC zoning could increase the intensity of use and impacts on the adjacent residential uses, although the small scale of the potential use would tend to keep the more intensive types of LC uses from the site.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The “2030 Wichita Functional Land Use Guide, as amended May 2005” of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for “local commercial.” The McAdams Neighborhood Revitalization Plan includes this property in the 13<sup>th</sup> Street corridor for neighborhood business startups (Goal 8.3). This request is in conformance with the comprehensive and the neighborhood revitalization plan.
5. Impact of the proposed development on community facilities: The impact on the road system will be minimal.

DONNA GOLTRY, Planning Staff presented the Staff Report.

**MOTION:** To approve subject to staff recommendation.

**J. JOHNSON** moved, **B. JOHNSON** seconded the motion, and it carried (12-0).

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**City of Wichita  
City Council Meeting  
November 17, 2009**

**TO:** Mayor and City Council

**SUBJECT:** PUD2009-00004 – City Planned Unit Development request from SF-5 Single-family Residential (“SF-5”) zoning to create PUD #32, The Lost Sock Planned Unit Development; generally located west of Hydraulic Street and 1/8 mile north of 55th Street South. (District III)

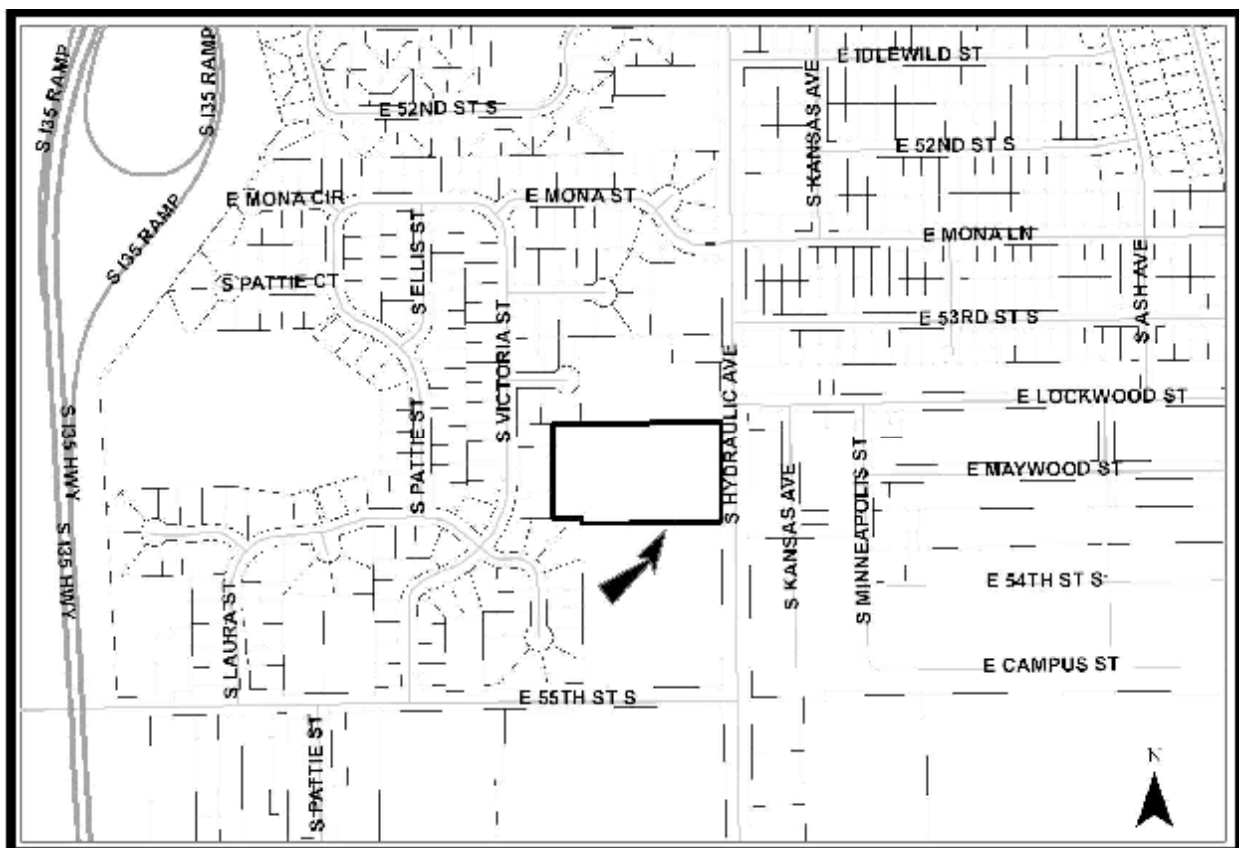
**INITIATED BY:** Metropolitan Area Planning Department

**AGENDA:** Planning (Non-consent)

**MAPC Recommendation:** Approve, subject to platting within one year and subject to PUD conditions as recommended by DAB III except modification of landscaping on Hydraulic Street (11-2).

**MAPD Staff Recommendation:** Approve, subject to platting within one year and subject to PUD conditions.

**DAB Recommendation:** Approve, subject to platting within one year and subject to the PUD conditions recommended by staff and additional condition prohibiting commercial trash hauling between 9 P.M. and 7 A.M. (8-0).



**Background:** The applicant proposes PUD #32 The Lost Sock Planned Unit Development (“PUD”), generally located west of Hydraulic Street and 1/8 mile north of 55th Street South (5439 S. Hydraulic Street). Current zoning of the property is SF-5 Single-Family Residential (“SF-5”), but past use was as a nursery and greenhouse, Meyer’s Garden Spot. It has been closed for several years.

The proposed PUD is 5.06 acres and has six parcels. The PUD was selected as the means for structuring the land into a more cohesive future development pattern, capitalizing on the existing improvements to the extent possible, but moving forward toward a higher quality of development. Its location of 1/8 mile away from the arterial intersection and north of the original “commercial corner” zoned LC Limited Commercial (“LC”) in 1958 would not have made a case for LC or “OW” Office Warehouse (“OW”) type zoning absent the existing buildings onsite. The use of warehouse type activities on the interior of the tract is based on the presence of existing structures that do not lend themselves to high traffic retail use. Setback and buffering requirements are unusual compared to normal commercial development due to the constraints from the existing land use ownership and development patterns. Building coverage varies among parcels due to existing building coverage and is greater than typical CUPs for some parcels. Finally, design elements are proposed for phasing in as new or extensive redevelopment occurs over the course of reutilization of the land.

Existing buildings on the site include: the main retail building fronting Hydraulic Street (proposed Parcel 1), a greenhouse adjoining the retail building (proposed Parcel 3), a metal shed for storage behind the retail building (proposed Parcel 5) and an existing greenhouse in the southwest corner of the PUD (proposed Parcel 6). Two additional parcels would be allow for retail type use along Hydraulic Street (proposed Parcel 2) and possible office-warehouse type of use in the southwest corner of the PUD (proposed Parcel 4).

Proposed uses for Parcels 1-3 along Hydraulic Street would be: ATM; office, general; personal care service; personal improvement service; printing and copying, limited; recreation and entertainment, indoor; restaurant and retail, general. The intended use for Parcel 1 is a laundromat (personal improvement service), and a greenhouse is added as a proposed use for Parcel 3 to reutilize the large greenhouse already onsite.

Proposed uses for the three parcels in the west half of the PUD (Parcels 4-6) would be those uses allowed in the office warehouse district except storage, outdoor, and tattooing and body piercing. For Parcel 6, greenhouse would be added as a proposed use of the existing greenhouse.

The applicant has requested to exclude residential uses and some public, civic uses and commercial uses to clarify that these uses not be allowed by this PUD approval. The prohibited uses are: correctional placement residences, adult entertainment, sexually oriented businesses, nightclubs, event centers, entertainment establishments, private clubs, taverns, drinking establishments, tattooing and body piercing and sale of liquor or cereal malt beverages.

Building coverage and floor area ratio varies among the parcels, primarily due to the existing greenhouses. Parcels 1, 2, 4 and 5 would be the typical level of 30 percent building coverage and 35 percent for maximum gross floor area. Parcel 3 would be 56 percent and Parcel 6 would be 53 percent based on the size of the existing buildings, but rebuilding on Parcel 6 would set new development at the typical standards. Maximum height is 35 feet throughout. Parking standards are per the Unified Zoning Code requirements for commercial uses (LC or OW), but stipulating that greenhouse use on a parcel only requires five spaces for the parcel.

Setbacks vary, which is permissible within a PUD, and are above minimum standards on the western edge (50 feet) and are 35 feet along Hydraulic Street. They are set at 15 feet and 25 feet along the north property line. The portion that is 25 feet is adjoining single-family lots, as is the case for two lots on the southwest corner also. To compensate for the narrower setback, a denser landscape buffer is suggested. A 6-foot wooden fence is called out for this border with SF-5. The area within the setbacks is shown as a drive

aisle. Currently, the driveway is gravel and it may encroach along a residual strip of land owned by the nursery use to the south. Apparently this owner retained the eastern 10-foot strip of Lots 26-29, Block C, Rivendale Addition and the northern 27-foot strip of Lots 31 and 32 Block C, Rivendale Addition. The land is not useful by itself and complicates the driveway location for the PUD as well as the landscaping and screening separation for the adjacent residential lots.

Other PUD requirements will include phased in landscape improvements along Hydraulic Street, phased in architectural improvements to the existing buildings and standards for new construction, prohibiting overhead doors on the west 100 feet of Parcels 4, 5 and 6, consistency in lighting standards, specification of two access points, pedestrian connectivity to Hydraulic Street and within buildings onsite, internal cross-lot circulation. Signage would be two monument style signs along Hydraulic Street with a height of 25 feet and total size of 0.8 times linear frontage, with the signs prohibiting flashing, moving and signs that create the illusion of movement except for time and temperature signs, plus prohibiting wall signs on the west 100 feet of Parcels 4, 5 and 6. Window signage is restricted to 25 percent. Portable, off-site and billboard signs are prohibited.

The PUD is located along a major arterial, but is primarily surrounded by residential uses. River Oaks Manufactured Home Subdivision, zoned MH, is located directly east of Hydraulic Street, transitioning to River Oaks Manufactured Home Park zoned MH to the southeast. A single-family subdivision zoned SF-5 is to the northeast. The property to the north is zoned SF-5 and has a large lot residence plus a vacant tract along Hydraulic Street. Rivendale Addition, zoned SF-5 and developing with single-family residences, wraps the northwest corner, west side and southwest corner of the PUD. The property to the south has a residual strip of SF-5 about 40 feet wide, then is zoned LC to the corner of 55<sup>th</sup> Street South. It is used for growing nursery stock.

**Analysis:** At the District III Advisory Board meeting held October 7, 2009, several neighborhood residents were present and raised concerns about the effect on the Rivendale housing addition that backs up to the property, noise generated by commercial businesses and patrons at a laundromat, appropriate landscaping and bright lighting. The DAB voted (8-0) to recommend approval subject to staff recommendations (including staff recommendation on landscaping on Hydraulic Street), with the additional condition of no commercial trash hauling be allowed between the hours of 9 P.M. and 7 A.M. At the MAPC meeting held October 8, 2009, the MAPC voted (11-2) to approve subject to recommendation of the DAB except to modify landscape requirements. The MAPC recommendation was to APPROVE the request, subject to platting within one year and the following conditions:

1. Development shall be in substantial conformance with the plan and all conditions and requirements as shown on the approved PUD.
2. For landscaping along Hydraulic, that the north side of the property be landscaped per the Landscape Ordinance; that the number of street trees along Hydraulic be doubled; and that there be minor removal of paving at the southeast corner of the site to provide visual balance and bumper blocks be used to separate the parking lot from the sidewalk.
3. No commercial trash hauling shall be allowed after 9:00 P.M. and before 7:00 A.M.
4. The height of lighting shall be limited to 15 feet in height within 100 feet of the west property line.
5. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
6. The transfer of title of all or any portion of the land included within the Planned Unit Development does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land and be binding upon the present owners, their successors and assigns, unless amended.
7. Prior to publishing the resolution establishing the PUD zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as PUD #32) includes special conditions for development on this property.
8. The applicant shall submit 4 revised copies of the PUD to the Metropolitan Area Planning

Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

No protests have been received.

**Financial Considerations:** None.

**Legal Considerations:** The ordinance has been reviewed and approved as to form by the Law Department.

**Recommendation/Actions:**

1. Adopt the findings of the MAPC and approve the PUD subject to platting within one year; place the ordinance on first reading; withhold publication of the ordinance until instructed by planning staff, following the recording of the plat;
2. Modify the request per the alternate recommendation of the DAB, approve the PUD subject to platting within one year; place the ordinance on first reading; withhold publication of the ordinance until instructed by planning staff, following the recording of the plat; or  
(An override of the Planning Commission's recommendation requires a two-third majority vote of the City Council on the first hearing.)
3. Return the application to the MAPC for reconsideration.

ORDINANCE NO. 48-561

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY  
OF THE CITY OF WICHITA, KANSAS.

**SECTION 1.** That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

**Case No. PUD2009-00004**

Request for zone change from “SF-5” Single-family Residential to “PUD #32” The Lost Sock Planned Unit Development on property described as:

A tract beginning 319.17 feet South of the Northeast corner of the Southeast Quarter of the Southeast Quarter; thence South 363 feet; thence West 560.17 feet; thence North 20.04 feet to the South line of the Northeast Quarter of the Southeast Quarter of the Southeast Quarter; thence West 100 feet; thence North 345.96 feet; thence East 659.92 feet to beginning, except the East 50 feet for road, in Section 21, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, generally located west of Hydraulic Street and 1/8 mile north of 55th Street South (5439 S Hydraulic Street).

**SECTION 2.** That upon the taking effect of this ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita -Sedgwick County Unified Zoning Code as amended.

**SECTION 3.** That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

**ADOPTED AT WICHITA, KANSAS,** November 24, 2009.

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Carl Brewer - Mayor

**ATTEST:**

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Karen Sublett, City Clerk

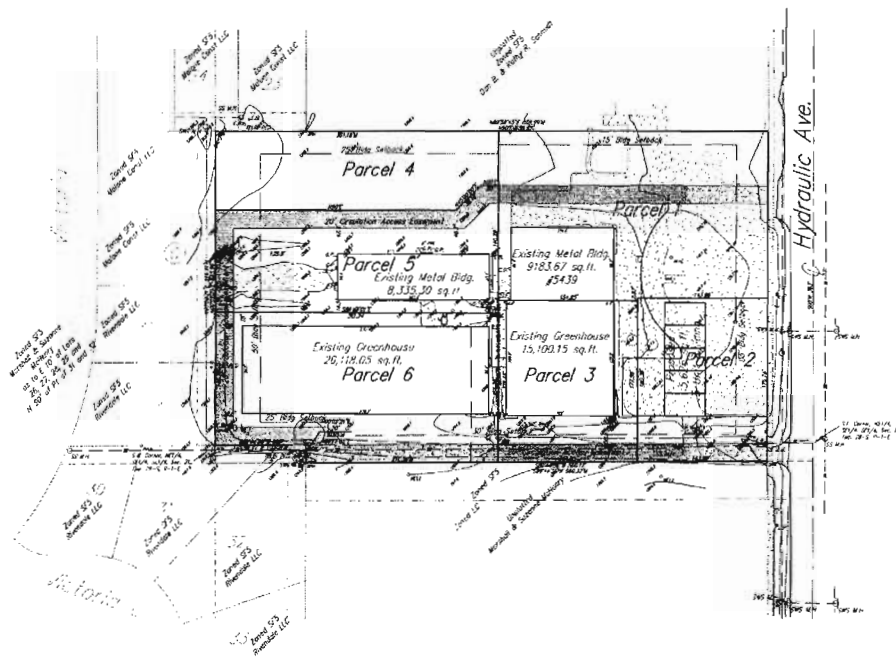
(SEAL)

Approved as to form:

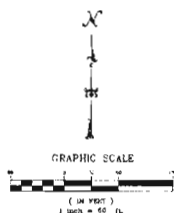
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Gary E. Rebenstorf, City Attorney





# THE LOST SOCK PLANNED UNIT DEVELOPMENT PUD #32 Wichita, Sedgwick County, Kansas.



## PARCEL DESCRIPTIONS:

### Parcel "1"

Net Area: 55,320 Sq Ft  
Maximum Building Coverage: 16,586 Sq Ft or 30%  
Maximum Gross Floor Area: 19,362 Sq Ft  
Floor Area Ratio: .35%  
Maximum Number of Buildings: 2  
Maximum Building Height: 35 feet  
Proposed Uses: Automated Teller Machine, Office, General, Personal Care Service, Personal Improvement Service, Printing & Copying, Limited, Recreation & Entertainment, Indoor, Restaurant, Retail, General  
Parking: Per Unified Zoning Code for LC Zoning.

### Parcel "2"

Net Area: 25,923 Sq Ft  
Maximum Building Coverage: 7,777 Sq Ft or 30%  
Maximum Gross Floor Area: 9,071 Sq Ft  
Floor Area Ratio: .35%  
Maximum Number of Buildings: 1  
Maximum Building Height: 35 feet  
Proposed Uses: Automated Teller Machine, Office, General, Personal Care Service, Personal Improvement Service, Printing & Copying, Limited, Recreation & Entertainment, Indoor, Restaurant, Retail, General  
Parking: Per Unified Zoning Code for LC Zoning.

### Parcel "3"

Net Area: 27,561 Sq Ft  
Maximum Building Coverage: 15,360 Sq Ft  
Maximum Gross Floor Area: 15,360 Sq Ft  
Floor Area Ratio: .56%  
Maximum Number of Buildings: 1  
Maximum Building Height: 35 feet  
Proposed Uses: Automated Teller Machine, Office, General, Personal Care Service, Personal Improvement Service, Printing & Copying, Limited, Retail General, Recreation & Entertainment, Indoor, Restaurant, and Greenhouse.  
Parking: Per Unified Zoning Code for Zoning dependent upon the use, but allowing 5 spaces if the use is solely for Greenhouse.

### Parcel "4"

Net Area: 26,184 Sq Ft  
Maximum Building Coverage: 7,849 Sq Ft or 30%  
Maximum Gross Floor Area: 9,157  
Floor Area Ratio: .35%  
Maximum Number of Buildings: 2  
Maximum Building Height: 35 feet  
Proposed Uses: Uses allowed in the OW - Office Warehouse District, except Outdoor Storage, Tinting and recycling process centers will not be allowed.  
Parking: Per Unified Zoning Code for OW Zoning.

### Parcel "5"

Net Area: 35,992 Sq Ft  
Maximum Building Coverage: 10,797 Sq Ft or 30%  
Maximum Gross Floor Area: 12,597 Sq Ft  
Floor Area Ratio: .35%  
Maximum Number of Buildings: 2  
Maximum Building Height: 35 feet  
Proposed Uses: Uses allowed in the OW - Office Warehouse District, except Outdoor Storage, Tinting and recycling process centers will not be allowed.  
Parking: Per Unified Zoning Code for OW Zoning.

### Parcel "6"

Net Area: 49,525 Sq Ft  
Maximum Building Coverage: 26,188 Sq Ft for existing Greenhouse  
14,857 or 30% for other uses  
Maximum Gross Floor Area: 29,948 Sq Ft for Greenhouse/  
17,337 Sq Ft for other uses  
Floor Area Ratio: .53% for Greenhouse/.35% for other uses  
Maximum Number of Buildings: 2  
Maximum Building Height: 35 feet  
Proposed Uses: Automated Teller Machine, Construction Sales & Service, Greenhouse and/or Uses allowed in the OW - Office Warehouse District, except Outdoor Storage, Tinting and recycling process centers will not be allowed.  
Parking: Per Unified Zoning Code for OW Zoning, but allowing 5 spaces if the use is solely for Greenhouse.

## GENERAL PROVISIONS:

- Total Gross Land Area: 220,418.57 sq. ft. (or 5.06 acres)
- Total Net Land Area: 220,418.57 sq. ft. (or 5.06 acres)
- Setbacks are as indicated on the face of the P.U.D. or as specified in the Parcel descriptions. If contiguous parcels are to be developed under the same ownership, setbacks between these parcels will not be required.
- Parking shall be in accordance with Section IV of the Unified Zoning Code, unless otherwise specified in the parcel description.
- Landscaping shall comply with the Landscaping Ordinance of the City of Wichita, except along the Hydraulic R/W where street trees will be allowed between the sidewalk and the west curb of Hydraulic. Landscaping shall be provided at twice that required by ordinance to enhance the screening of the west 100 feet of the north line of parcel 4 and the west 100 feet of south line of parcel 6 as well as the west line of parcels 4, 5 and 6. A Landscape Plan prepared by a Kansas Landscape Architect shall be submitted by the applicant and approved by the Director of Planning prior to the issuance of any building permits on a parcel.
- Screening shall be provided by a six (6) foot high solid board fence along the north line of parcels 1 and 4, along the west line of parcels 4, 5 and 6 and along the south line of parcel 6, provided however that breaks in the screening shall be allowed along the north line of parcel 1 in conjunction with any joint access or joint parking agreements with the adjacent property to the north.
- Roof-top mechanical equipment shall be screened from ground level view per the Unified Zoning Code for the LC District.
- Trash receptacles, loading docks, outdoor storage and loading areas shall be appropriately screened with similar materials to the main building to reasonably hide them from ground view.
- No parcel within this P.U.D. shall allow the use of adult entertainment establishments, any residential uses, transient placement residences, adult entertainment, sexually oriented businesses, nightclubs, event centers, entertainment establishments, private clubs, taverns, drinking establishments, tattooing and body piercing, and sale of liquor or cores malt beverages.
- A Cross-Lot circulation agreements shall be established to allow for internal vehicular movement between the parcels within the P.U.D. All parcels shall have access to and from Hydraulic over and across adjacent parcels as allowed by the Cross-Lot circulation agreement.
- The transfer of title of all or any portion of land included within the P.U.D. (or any amendments thereto) does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land and be binding upon present owners, their successors and assigns.
- Signs shall be in accordance with the Sign Code of the City of Wichita per the LC District for parcels 1, 2 and 3 and per the OW District for parcels 4, 5 and 6, with a maximum of 292 square feet. All freestanding signs must be monument type and shall have a maximum height of 25 feet. Flashing signs will not be allowed. Window signage must not exceed 25% of the window area. Flashing signs (except for signs showing only time, temperature and other public service messages), rotating or moving signs, signs with moving lights or signs which create illusions of movement are not permitted. No portable billboards and off-site signages are permitted.
- All Exterior Lighting shall be shielded to direct light disbursement in a downward direction.
- All parcels shall share similar or consistent parking lot lighting elements (i.e. fixtures, poles and lamps, etc.). Light poles shall be limited to 24 feet in height.
- No wall signage or overhead signs shall be allowed in the west 100 feet of parcels 4, 5 or 6.
- Metal facades shall not be allowed as a primary wall surfaces for any new construction in this PUD.
- A Plan for a pedestrian walk system shall be submitted and approved by the Director of Planning prior to the issuance of building permits. Said walk system shall link the sidewalk along Hydraulic with the existing and proposed buildings within the subject property.
- A Drainage Plan shall be submitted to City Engineering for approval at the time of platting. Required guarantees shall be provided at the time of platting.
- Access Controls shall be as shown on the PUD.
- Parcels 1, 2 and 3 will be developed by a single owner.



Savoy Company, P.A.  
Land Surveyors  
1400 E. 12th Street, Suite 100  
Wichita, KS 67214-1000

PH 316.263.0008

FAX 316.263.0025

www.savoyco.com

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**INTEROFFICE  
MEMORANDUM**

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**TO:** MAPC Members  
**FROM:** Janet Johnson, Neighborhood Assistant, District III  
**SUBJECT:** PUD2009-00004 PUD #32 Lost Sock Planned Unit Development  
**DATE:** Oct. 8, 2009

On Wednesday, Oct. 7, 2009, the District III Advisory Board (DAB) considered a request for PUD #32 The Lost Sock Planned Unit Development ("PUD"), generally located west of Hydraulic Street and 1/8 mile north of 55th Street South (5439 S Hydraulic Street). Current zoning of the property is SF-5 Single-Family Residential ("SF-5"), but past use was as a nursery and greenhouse, Meyer's Garden Spot. It has been closed for several years. The proposed use is retail, restaurant, office warehouse and greenhouse uses.

The DAB Members were provided the staff report for review.

Several neighborhood residents were present and had concerns about 1) The Rivendale housing addition backs up to the property 2) noise generated by commercial businesses 3) appropriate landscaping 4) bright lighting and 5) noise generated by people using the laundry mat such as loud car stereos.

The DAB members were concerned about commercial trash hauling from the PUD which could be disruptive to the neighboring single family residences.

**The DAB members voted 8-0 to recommend:**

**The application be approved subject to the outlined conditions; subject to platting within one year; AND NO COMMERCIAL TRASH HAULING BE ALLOWED BETWEEN THE HOURS OF 9 P.M. AND 7 A.M.**

Please review this information when PUD2009-00004 is considered.

## EXCERPT OF THE OCTOBER 8, 2009, MAPC HEARING

**Case No.: PUD2009-00004** - Dan B. and Kathy R. Schmidt (owner); Savoy Company, PA c/o Mark Savoy (agent), request the creation of a City PUD 32, the Lost Sock Planned Unit Development for commercial, greenhouse, and warehousing development on property described as:

A tract beginning 319.17 feet South of the Northeast corner of the Southeast Quarter of the Southeast Quarter; thence South 363 feet; thence West 560.17 feet; thence North 20.04 feet to the South line of the Northeast Quarter of the Southeast Quarter of the Southeast Quarter; thence West 100 feet; thence North 345.96 feet; thence East 659.92 feet to beginning, except the East 50 feet for road, in Section 21, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, generally located west of Hydraulic Street and 1/8 mile north of 55th Street South (5439 S. Hydraulic Street).

**BACKGROUND:** The applicant proposes PUD #32 The Lost Sock Planned Unit Development ("PUD"), generally located west of Hydraulic Street and 1/8 mile north of 55th Street South (5439 S Hydraulic Street). Current zoning of the property is SF-5 Single-Family Residential ("SF-5"), but past use was as a nursery and greenhouse, Meyer's Garden Spot. It has been closed for several years.

The proposed PUD is 5.06 acres and has six parcels. The PUD was selected as the means for structuring the land into a more cohesive future development pattern, capitalizing on the existing improvements to the extent possible, but moving forward toward a higher quality of development. Its location 1/8 mile away from the arterial intersection and north of the original "commercial corner" zoned LC Limited Commercial ("LC") in 1958 would not have made a case for LC or "OW" Office Warehouse ("OW") type zoning absent the existing buildings onsite. The use of warehouse type activities on the interior of the tract is based on the presence of existing structures that do not lend themselves to high traffic retail use. Setback and buffering requirements are unusual compared to normal commercial development due to the constraints from the existing land use ownership and development patterns. Building coverage varies among parcels due to existing building coverage and is greater than typical of CUPs for some parcels. Finally, design elements are proposed for phasing in as new or extensive redevelopment occurs over the course of reutilization of the land.

Existing buildings on the site include: the main retail building fronting Hydraulic (proposed Parcel 1), a greenhouse adjoining the retail building (proposed Parcel 3), a metal shed for storage behind the retail building (proposed Parcel 5) and an existing greenhouse in the southwest corner of the PUD (proposed Parcel 6). Two additional parcels would be allow for retail type use along Hydraulic (proposed Parcel 2) and possible office-warehouse type of use in the southwest corner of the PUD (proposed Parcel 4).

Proposed uses for Parcels 1-3 along Hydraulic would be: ATM; office, general; personal care service; personal improvement service; printing and copying, limited; recreation and entertainment, indoor; restaurant and retail, general. The intended use for Parcel 1 is a Laundromat (personal improvement service), and greenhouse is added as a proposed use for Parcel 3 to reutilize the large greenhouse already onsite.

Proposed uses for the three parcels in the west half of the PUD (Parcels 4-6) would be those uses allowed in the office warehouse district except storage, outdoor, and tattooing and body piercing. For Parcel 6, greenhouse would be added as a proposed use of the existing greenhouse.

The applicant has requested to exclude residential uses and some public, civic uses and commercial uses to clarify that these uses not be allowed by this PUD approval. The prohibited uses are: correctional

placement residences, adult entertainment, sexually oriented businesses, nightclubs, event centers, entertainment establishments, private clubs, taverns, drinking establishments, tattooing and body piercing, and sale of liquor or cereal malt beverages.

Building coverage and floor area ratio varies among the parcels, primarily due to the existing greenhouses. Parcels 1, 2, 4 and 5 would be the typical level of 30 percent building coverage and 35 percent for maximum gross floor area. Parcel 3 would be 56 percent and Parcel 6 would be 53 percent based on the size of existing buildings, but rebuilding on Parcel 6 would set new development at the typical standards. Maximum height is 35 feet throughout. Parking standards are per the Unified Zoning Code requirements for commercial uses (LC or OW) but stipulating that greenhouse use on a parcel only requires five spaces for the parcel.

Setbacks vary, which is permissible within a PUD, and are above minimum standards on the western edge (50 feet) and are 35 feet along Hydraulic. They are set at 15 feet and 25 feet along the north property line. The portion that is 25 feet is adjoining single-family lots, as is the case for two lots on the southwest corner also. To compensate for the narrower setback, a denser landscape buffer is suggested. A 6-foot wooden fence is called out for this border with SF-5. The area within the setbacks is shown as a drive aisle. Currently, the driveway is gravel and it may encroach along a residual strip of land owned by the nursery use to the south. Apparently this owner retained the eastern 10-foot strip of Lots 26-29, Block C, Rivendale Addition and the northern 27-foot strip of Lots 31 and 32 Block C, Rivendale Addition. The land is not useful by itself and complicates the driveway location for the PUD as well as the landscaping and screening separation for the adjacent residential lots.

Other PUD requirements will include phased in landscape improvements along Hydraulic, phased in architectural improvements to the existing buildings and standards for new construction, prohibiting overhead doors on the west 100 feet of Parcels 4, 5 and 6, consistency in lighting standards, specification of two access points, pedestrian connectivity to Hydraulic and within buildings onsite, internal cross-lot circulation. Signage would be two monument style signs along Hydraulic with a height of 25 feet and total size of 0.8 times linear frontage, with the signs prohibiting flashing, moving and signs that create the illusion of movement except for time and temperature signs, plus prohibiting wall signs on the west 100 feet of Parcels 4, 5 and 6. Window signage is restricted to 25 percent. Portable, off-site and billboard signs are prohibited.

The PUD is located along a major arterial, but is primarily surrounded by residential uses. River Oaks Manufactured Home Subdivision, zoned MH, is located directly east of Hydraulic, transitioning to River Oaks Manufactured Home Park zoned MH to the southeast. A single-family subdivision zoned SF-5 is to the northeast. The property to the north is zoned SF-5 and has a large lot residence plus a vacant tract along Hydraulic. Rivendale Addition, zoned SF-5 and developing with single-family residences, wraps the northwest corner, west side and southwest corner of the PUD. The property to the south has a residual strip of SF-5 about 40 feet wide, then is zoned LC to the corner of 55<sup>th</sup> Street South. It is used for growing nursery stock.

**CASE HISTORY:** The property is un-platted.

**ADJACENT ZONING AND LAND USE:**

|        |          |                                                                                                        |
|--------|----------|--------------------------------------------------------------------------------------------------------|
| NORTH: | SF-5     | Single-family residence, vacant                                                                        |
| EAST:  | MH, SF-5 | River Oaks Manufactured Home Subdivision, River Oaks Manufactured Home Park, single-family subdivision |
| SOUTH: | SF-5, LC | Agricultural (growing stock)                                                                           |
| WEST:  | SF-5     | Rivendale Subdivision single-family residential                                                        |

**PUBLIC SERVICES:** Hydraulic is a four-lane minor arterial. Average Annual Daily Traffic in 2006

was calculated at 9,200 vehicles per day southbound at 47<sup>th</sup> Street South, reducing to 7,097 at 55<sup>th</sup> Street South. Northbound volumes were 5,878 at 55<sup>th</sup> Street South, increasing to 11,856 at 47<sup>th</sup> Street South. All normal public services are available.

**CONFORMANCE TO PLANS/POLICIES:** The "2030 Wichita Functional Land Use Guide," 2005 amendments to the *Wichita-Sedgwick County Comprehensive Plan* identify the site as "park and open space." The proposed PUD would not be in conformance with this designation, but the designation was abrogated when the Rivendalc Subdivision was allowed to be developed in low-density residential use instead of as a park. Therefore, the Land Use Guide is not relevant for the proposed application. A better measure is conformance with PUD criteria:

- (1) Reducing or eliminating the inflexibility that sometimes results from strict application of zoning standards that were designed primarily for individual lots;
- (2) Allowing greater freedom in selecting the means to provide access, light, open space and design amenities;
- (3) Promoting quality urban design and environmentally sensitive development by allowing development to take advantage of special site characteristics, locations and land uses; and
- (4) Allowing deviations from certain zoning standards that would otherwise apply if not contrary to the general spirit and intent of this Code.

The proposed PUD conforms to these standards by tailoring the use pattern to utilize the past development pattern, keep the more intensive retail activities along Hydraulic and adjacent to a nonresidential use (nursery stock) established on the LC tract. It allows certain OW type uses with buffering and screening and restriction in signage. Density would be reduced on Parcel 6 if redeveloped; design amenities will increase with respect to architecture and landscaping as the property redevelops. The PUD has striven to improve the site within the constraints of the existing development, although it will not be expected to attain the quality that would be easier to achieve on a pristine site.

**RECOMMENDATION:** Based on these comments and information available prior to the public hearing, Staff recommends the application be APPROVED subject to the following conditions:

1. Development shall be in substantial conformance with the plan and all conditions and requirements as shown on the approved PUD.
2. Landscaping along Hydraulic shall be phased in as new construction or redevelopment triggering compliance with the Landscape Ordinance occurs.
3. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
4. The transfer of title of all or any portion of the land included within the Planned Unit Development does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land and be binding upon the present owners, their successors and assigns, unless amended.
5. Prior to publishing the resolution establishing the PUD zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as PUD #32) includes special conditions for development on this property.
6. The applicant shall submit 4 revised copies of the PUD to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The PUD is located along a major arterial, but is primarily surrounded by residential uses. River Oaks Manufactured Home Subdivision, zoned MH, is located directly east of Hydraulic, transitioning to River Oaks Manufactured Home Park zoned MH to the southeast. A single-family subdivision zoned SF-5 is to the northeast. The property to the north is zoned SF-5 and has a large lot residence plus a vacant tract along Hydraulic. Rivendale Addition, zoned SF-5 and developing with single-family residences, wraps the northwest corner, west side and southwest corner of the PUD. The property to the south has a residual strip of SF-5 about 40 feet wide, then is zoned LC to the corner of 55<sup>th</sup> Street South. It is used for growing nursery stock.
2. The suitability of the subject property for the uses to which it has been restricted: The site is less suited to SF-5 use due to the existing structures and past land use pattern.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The nearby properties were developed knowing that these buildings were existing, although as nonconforming uses. The approval of the PUD will reestablish commercial uses on the site rather than force conversion of it to a lower intensity development. The effect is reduced by the PUD provisions and restrictions.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "2030 Wichita Functional Land Use Guide," 2005 amendments to the *Wichita-Sedgwick County Comprehensive Plan* identify the site as "park and open space." The proposed use of this additional land would not be in conformance with this designation, nor is the adjacent single-family development (Rivendale Addition) established to the west.
5. Impact of the proposed development on community facilities: The PUD will increase traffic on Hydraulic, perhaps up to a 20 percent increase over current volumes, although the street is sized to handle this level of traffic volumes.

**DONNA GOLTRY**, Planning Staff presented the Staff Report. She referenced the DAB Memo hand out that recommended approval 8-0 subject to staff recommendations, but with an additional recommendation that there be no commercial trash hauling between the hours of 9:00 P.M. and 7:00 A.M. She said there are a few clarifications being made to the PUD on signage and limiting the height of lighting within 100 feet of the west property line. Concerns raised at the DAB meeting were about trash, noise and lighting. She said the agent and applicant were in agreement with lowering the lighting; however, they did have an issue with one of the recommendations in the Staff Report, and they wanted to bring this to the attention of the MAPC for consideration.

**HILLMAN** clarified that the applicant was in agreement with the request from the DAB on the commercial trash hauling hours.

**GOLTRY** said she believed so.

**HENTZEN** asked if there was a general policy regarding trash hauling at night, or was that decided on a case-by-case basis.

**GOLTRY** said she was not aware of a general policy.

**DIRECTOR SCHLEGEL** clarified that to the best of his knowledge there was no general policy; that the issue was decided on a case-by-case basis and also based on the proximity of the site to residential neighbors.

**HENTZEN** mentioned that based on location and vehicular traffic, sometimes trash has to be hauled at night.

**MARK SAVOY, AGENT FOR THE APPLICANT** said they are in agreement with staff comments except for one item. He also mentioned the DAB comments and that the DAB supported the application. He referenced Condition #2 and said they had an issue with landscaping along Hydraulic, which was the front property line. He stated that there was an existing public sidewalk that directly abutted the existing concrete parking, and that it was paved right up to the sidewalk. He said in order to meet the landscaping requirement, they will have to remove quite a bit of concrete, which will cause the applicant additional expense. He said they are willing to add some additional street trees and requested relief on this one condition.

**HILLMAN** said he used to do business in that area and that he tended to agree that it made sense at this particular location not to tear up the existing concrete or asphalt.

**J. JOHNSON** asked how many trees the applicant would be willing to add.

**SAVOY** said he believed typical street trees were every 40 feet. He said they would be willing to make that a tree every 20 feet.

**GOLTRY** referred to the site plan and pictures of the site.

**DIRECTOR SCHLEGEL** asked staff what the applicant would need to do to comply with Condition #2.

**GOLTRY** explained that as new buildings are added to a parcel, landscaping will need to be added if the value of the building is increased by 50% or if the expansion exceeds 30% of floor area on that parcel. She said parking lot screening is generally provided by shrubbery, or a combination of shrubbery, berming, and a low wall. In addition, she said there are a certain number of trees required in the parking lot's interior, to reduce the visual impact of the parking lot.

**B. JOHNSON** commented that the lot was completely screened on the east side by a fence, and asked if that made any difference on this case.

**GOLTRY** said the fence is across the street and that the screening they are currently discussing is to separate the parking lot from the sidewalk, both visually and for pedestrian traffic, to keep cars from encroaching on the sidewalk.

**FOSTER** referred to the picture of the sign on the north of the site and asked if there is room for required screening at that location.

**GOLTRY** said there is room for screening on the north side of the drive approach; however, there is not on the south side of the approach where concrete is against the sidewalk.

**DAN SCHMIDT, APPLICANT** said they are willing to add trees, but asked if bumper guards could also be used to prevent people from parking on the sidewalk.

**GOLTRY** said bumper guards were a possibility or there could be any combination of items including some low screening on portions of the area but not across the entire frontage. She said it could be broken up visually with strategic breaks in paving to break up the visual mass. She said there are a number of possible solutions.

There was brief discussion concerning the size of the concrete paving and **GOLTRY** commented that the concrete slabs are about 10' x 12' in size.

**HILLMAN** asked about surrounding zoning, and if there would be homes on three sides of the site.

**SAVOY** said south of the site is zoned Limited Commercial and currently houses a tree farm. He said north of the site is zoned Single-Family Residential with 2-3 acres. This is where a church has indicated they want to build. In the back part of the property north of the site is a residence, which they plan to plat around as a separate residential lot.

**HILLMAN** asked if they anticipated pedestrian traffic along the sidewalk to the laundromat.

**SAVOY** said the site is not really handy for pedestrian traffic.

**B. JOHNSON** asked how they felt about landscaping on the north, islands in the concrete on the south, and other suggestions.

**SAVOY** said they really didn't want to destroy the concrete slab and they also did not feel the area lends itself to installation of bushes along Hydraulic, such as the landscaping you see at most QuikTrips.

**B. JOHNSON** commented that breaking up the line of the area would help.

**MOTION:** To approve subject to staff recommendation and include the DAB recommendation of no trash hauling after 9:00 P.M. and before 7:00 A.M. and reduction in landscape requirements so that the applicant can take advantage of the parking in front of the site.

**HILLMAN** moved, **J. JOHNSON** seconded the motion.

**SUBSTITUTE MOTION:** To approve subject to staff recommendation and the DAB recommendations regarding trash hauling and lighting; that the north side of the property be landscaped per the Unified Zoning Code; bumper blocks be provided where existing concrete is adjacent to the existing sidewalk; that the number of street trees along Hydraulic be doubled; and that there be minor removal of paving at the southeast corner of the site to provide visual balance.

**FOSTER** moved, **HILLMAN** seconded the motion.

**J. JOHNSON** withdrew his second of the original motion.

**MCKAY** asked for clarification of the motion.

**MITCHELL** said although he thought **FOSTER'S** compromise was a good idea, he said he would not support anything that recommended removing concrete to plant trees.

The question was called and the substitute motion passed (11-2).

**MITCHELL** and **SHERMAN** – No.



City of Wichita  
City Council Meeting  
November 17, 2009

**To:** Mayor and City Council

**Subject:** ZON2009-00030 - City zone change from SF-5 Single-family Residential ("SF-5") to TF-3 Two-family Residential ("TF-3"); generally located north of Pawnee Avenue and west of Seneca Street. (District IV)

**Initiated By:** Metropolitan Area Planning Department

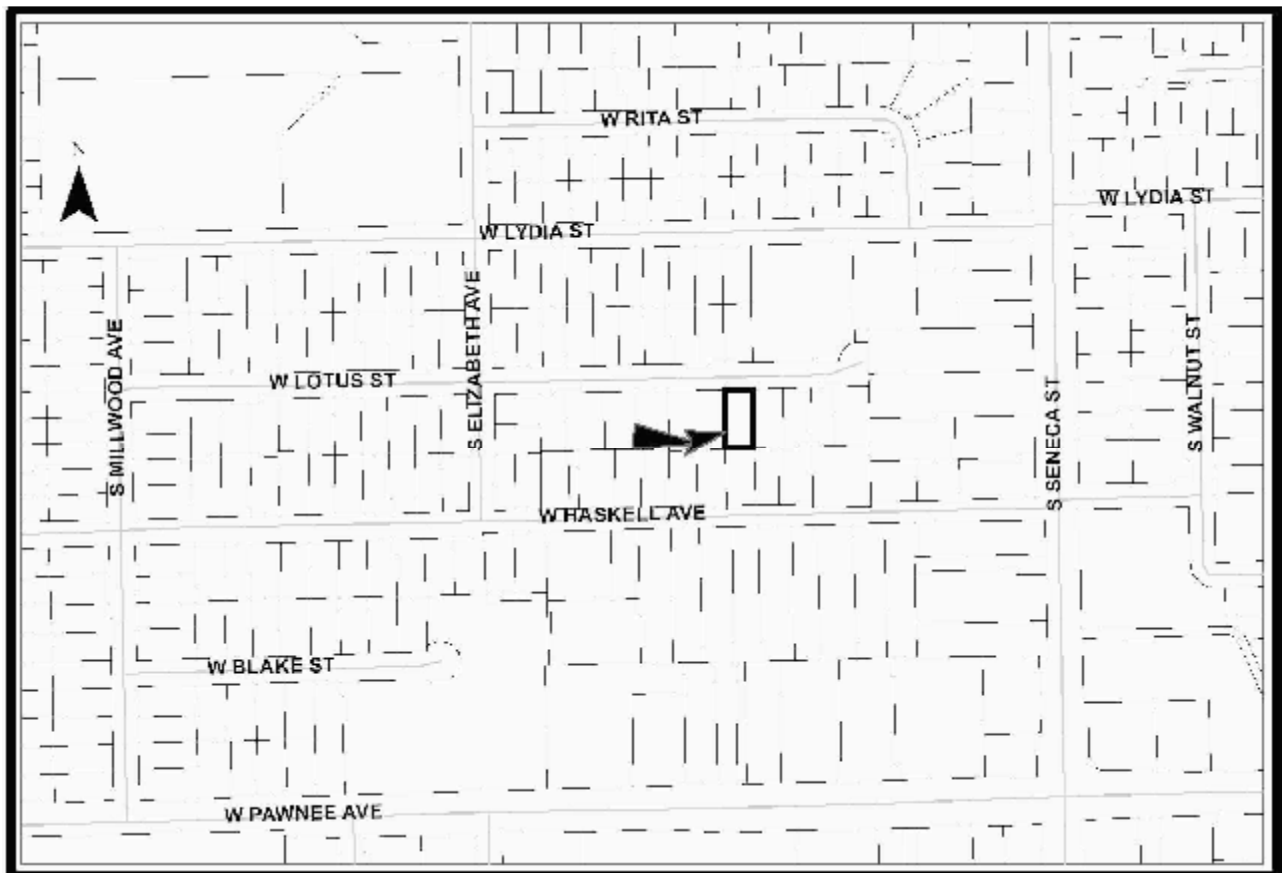
**Agenda:** Planning (Consent)

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**MAPC Recommendation:** Approve unanimously (13-0).

**MAPD Staff Recommendation:** Approve.

**DAB IV Recommendation:** Approve unanimously (7-0).



**Background:** The applicant requests a zone change from SF-5 Single-Family Residential (“SF-5”) to TF-3 Two-Family Residential (“TF-3”) on the undeveloped Lot 1, Block B, Roberts-Brenner-Klein Addition. The applicant proposes to build a duplex. Aerials of the area show the lot to be vacant since at least 1997. The site is located on the south side of Lotus Street. Lotus is a residential cul-de-sac on its east side and intersects with the residential street Elizabeth Avenue on its west end. Lotus has no direct access to an arterial or collector street.

The immediate area is characterized by SF-5 zoned single-family residences built from the late 1920s through the 1970s. There is a SF-5 zoned church located northeast of the site, across Lotus Street. The exceptions to the neighborhood’s SF-5 zoning is an adjacent, eastern TF-3 zoned single-family residence (built 1945 and no record of a zone change) and the abutting eastern properties, which currently have two duplexes being built on them (Lots 3 and 4, Block 1, LedgeStone Addition, recorded on April 14, 2009). The current duplex construction was the result of the zoning case (ZON2008-52), which changed SF-5 zoning to TF-3 zoning. The existing and proposed TF-3 zoned properties occupy the southeast, cul-de-sac end of Lotus, where there is adjacent LC Limited Commercial (“LC”) zoning and development.

**Analysis:** At the DAB IV meeting held on October 7, 2009, the DAB unanimously (7-0) recommended approval of the requested zoning. There were no protests at the DAB meeting. At the MAPC meeting held on October 8, 2009, the MAPC voted (13-0) to approve the requested zoning. There were no protests to this request at the MAPC meeting. Staff has not received any protests to the requested zoning.

**Financial Considerations:** None.

**Goal Impact:** Promote Economic Vitality

**Legal Considerations:** The ordinance has been reviewed and approved as to form by the Law Department.

**Recommendation/Actions:**

1. Adopt the findings of the MAPC and approve the zone change; place the ordinance establishing the zone change on first reading; or
2. Return the application to the MAPC for reconsideration.

(An override of the Planning Commission’s recommendation requires a two-thirds majority vote of the City Council on the first hearing.)

**Attachment:** None.

ORDINANCE NO. 48-562

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY  
OF THE CITY OF WICHITA, KANSAS.

**SECTION 1.** That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

**Case No. ZON2009-00030**

Zone change from SF-5 Single-family Residential ("SF-5") to TF-3 Two-family Residential ("TF-3") on property described as:

Lot 1, Block B, Roberts-Brenner-Klein Addition, Wichita, Sedgwick County, Kansas;  
generally located north of Pawnee Avenue, west of Seneca Street, on the south side of Lotus Street.

**SECTION 2.** That upon the taking effect of this ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita -Sedgwick County Unified Zoning Code as amended.

**SECTION 3.** That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

**ADOPTED AT WICHITA, KANSAS,** November 24, 2009.

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Carl Brewer - Mayor

**ATTEST:**

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Karen Sublett, City Clerk

(SEAL)

Approved as to form:

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Gary E. Rebenstorf, City Attorney

## EXCERPT OF THE OCTOBER 8, 2009, MAPC HEARING

**Case No.: ZON2009-00030** - Ledgestone Homes, Inc., (applicant/owner) Ruggles & Bohm, P.A., c/o Chris Bohm (agent), requested a City zone change from SF-5 Single-family Residential to TF-3 Two-family Residential on property described as:

Lot 1, Block B, Roberts-Brenner-Klein Addition to Wichita, Sedgwick County, Kansas, generally located north of Pawnee Avenue, west of Seneca Street on the south side of Lotus Street.

**BACKGROUND:** The applicant requests a zone change from SF-5 Single-Family Residential ("SF-5") to TF-3 Two-Family Residential ("TF-3") on the undeveloped Lot 1, Block B, Roberts-Brenner-Klein Addition. The applicant proposes to build a duplex. Aerials of the area show the lot to be vacant since at least 1997. The site is located on the south side of Lotus Street. Lotus is a residential cul-de-sac on its east side and intersects with the residential street Elizabeth Avenue on its west end. Lotus has no direct access to an arterial or collector streets.

The immediate area is characterized by SF-5 zoned single-family residences, built from the late 1920s through the 1970s. There is a SF-5 zoned church located northeast of the site, across Lotus Street. The exceptions to the neighborhood's SF-5 zoning is an adjacent, eastern TF-3 zoned single-family residence (built 1945, no record of a zone change) and the abutting eastern properties, which currently have two duplexes being built on them; ZON2008-52, SF-5 – TF-3, Lots 3 and 4, Block 1, Ledgestone Addition, recorded April 14, 2009. The existing and proposed TF-3 zoned properties occupy the south east, cul-de-sac end of Lotus, where there is adjacent LC Limited Commercial ("LC") zoning and development.

**CASE HISTORY:** The site is Lot 1, Block B, Roberts-Brenner-Klein Addition, recorded with the Register of Deeds May 18, 1959. The site is located in an area that was annexed into the City of Wichita between the years 1951 - 1960.

### **ADJACENT ZONING AND LAND USE:**

|        |      |                                                          |
|--------|------|----------------------------------------------------------|
| NORTH: | SF-5 | Church, single-family residences                         |
| SOUTH: | SF-5 | Single-family residences                                 |
| EAST:  | TF-3 | Two duplexes under construction, single-family residence |
| WEST:  | SF-5 | Single-family residences                                 |

**PUBLIC SERVICES:** The site has access to Lotus Street, a residential street. This portion of Lotus is paved and curbed with 60 feet of right-of-way (ROW), which ends in a cul-de-sac on its east side and intersects with the residential street, Elizabeth Avenue on its west side. The 2030 Transportation Plan shows no change to any of the above mentioned streets' status. The nearest traffic counts are at the Pawnee Avenue and Seneca intersection and they range from 18,308 to 22,465 average trips per day. Public water, sewer service and all other utilities are available to serve the site.

**CONFORMANCE TO PLANS/POLICIES:** The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan designates this area as appropriate for "Urban Residential" development. The Urban Residential category includes all housing types found in the municipality, including duplexes. The Comprehensive Plan contains the following objective: encourage residential redevelopment, infill, and higher density residential development, which maximize the public investment in existing and planned facilities and services. The objective is intended to be achieved through several strategies, including using zoning as tools to promote mixed-use development, higher density residential environments, and

appropriate buffering. The proposed TF-3 zoning would promote development of a vacant property, into a duplex, which would maximize the public investment in existing and planned facilities and services. There are existing TF-3 zoned properties adjacent and abutting the east side of the subject site, therefore the proposed TF-3 zoning does not introduce TF-3 zoning into the area. No buffering is required by the UZC between single-family residential use and a duplex.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The immediate area is characterized by SF-5 zoned single-family residences, built from the late 1920s through the 1970s. There is a SF-5 zoned church located northeast of the site, across Lotus Street. The exceptions to the neighborhood's SF-5 zoning is an adjacent, eastern TF-3 zoned single-family residence (built 1945, no record of a zone change) and the abutting eastern properties, which currently have two duplexes being built on them; ZON2008-52, SF-5 – TF-3, Lots 3 and 4, Block 1, Ledgestone Addition, recorded April 14, 2009. The existing and proposed TF-3 zoned properties occupy the south east, cul-de-sac end of Lotus, where there is adjacent LC Limited Commercial ("LC") zoning and development.
2. The suitability of the subject property for the uses to which it has been restricted: Although the undeveloped, 0.2-acre lot is zoned SF-5 and could be developed as single-family residential, aerials show it to be vacant since at least 1997. The proposed TF-3 zoning would promote development of a vacant property, into a duplex, which would maximize the public investment in existing and planned facilities and services. There are existing TF-3 zoned properties adjacent and abutting the east side of the subject site, therefore the proposed TF-3 zoning does not introduce TF-3 zoning into the area. There are two duplexes currently being built next door (east) to the subject site.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Typical concerns expressed by neighbors in regards to duplex development is declining property values of the neighborhood brought on by poor maintenance of what is typically rental housing, i.e., the duplexes. Poor maintenance of rental property is not an absolute, nor is there any guarantee that a single-family residence will be maintained by its owner. Aerials show the site to have been vacant since at least 1997; building a duplex on the site would seem to be preferable to letting the site remain vacant. The two duplexes being built on the abutting eastern lots are single story, with lap siding and attached garages and are the newest residences/buildings in the neighborhood.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan designates this area as appropriate for "Urban Residential" development. The Urban Residential category includes all housing types found in the municipality, including duplexes. The Comprehensive Plan contains the following objective: encourage residential redevelopment, infill, and higher density residential development, which maximize the public investment in existing and planned facilities and services. The objective is intended to be achieved through several strategies, including using zoning as tools to promote mixed-use development, higher density residential environments, and appropriate buffering. The proposed TF-3 zoning would promote development of a vacant property, into a duplex, which would maximize the public investment in existing and planned facilities and services. There are existing TF-3 zoned properties adjacent and abutting the east side of the subject site, therefore the proposed TF-3 zoning does not

introduce TF-3 zoning into the area. No buffering is required by the UZC between single-family residential use and a duplex.

5. Impact of the proposed development on community facilities: Community facilities should not be adversely impacted due to the minor increase in density.

**BILL LONGNECKER**, Planning Staff presented the Staff Report.

**FOSTER** asked about the e-mail regarding the Aberdeen Addition attached to the Staff Report. **LONGNECKER** said disregard that attachment. He also mentioned that the DAB recommended unanimous approval of the request.

**MOTION:** To approve subject to staff recommendation.

**B. JOHNSON** moved, **FOSTER** seconded the motion, and it carried (13-0).

**City of Wichita  
City Council Meeting  
November 17, 2009**

**TO:** Mayor and City Council

**SUBJECT:** SUB 2009-61 -- Plat of Rental Sales Estate located on the east side of Seneca, south of 47<sup>th</sup> Street South. (District IV)

**INITIATED BY:** Metropolitan Area Planning Department

**AGENDA ACTION:** Planning (Consent)

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**Staff Recommendation:** Approve the plat.

**MAPC Recommendation:** Approve the plat. (12-0)

**Background:** This site, consisting of one lot on 2.55 acres, is located within Wichita's city limits. This site is zoned SF-5 Single-family Residential and LC Limited Commercial.

**Analysis:** Water and sewer services are available to serve the site.

The plat has been approved by the Metropolitan Area Planning Commission, subject to conditions.

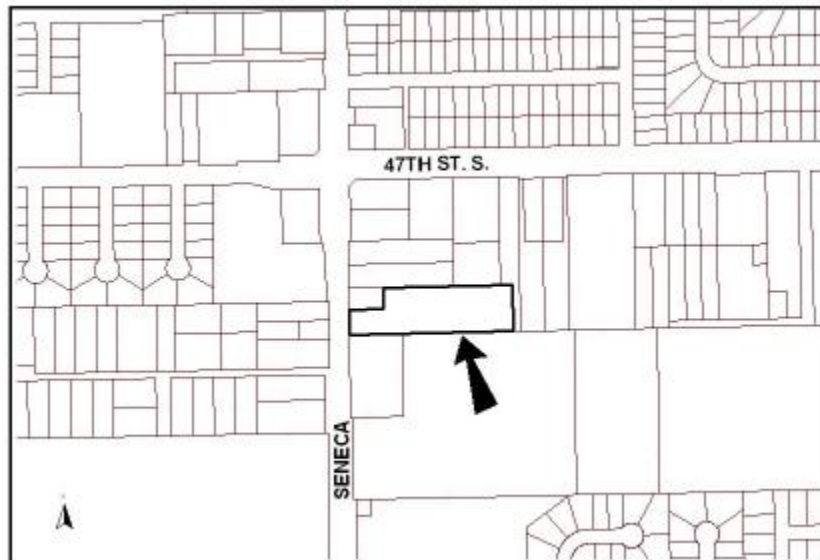
**Financial Considerations:** None.

**Goal Impact:** Ensure Efficient Infrastructure.

**Legal Considerations:** None.

**Recommendations/Actions:** Approve the plat and authorize the necessary signatures.

**Attachments:** None.





City of Wichita  
City Council Meeting  
November 17, 2009

**To:** Mayor and City Council

**Subject:** VAC2009-00034 - Request to vacate a portion of a platted setback; generally located on the southeast corner of Dugan Road and 36th Street South. (District IV)

**Initiated By:** Metropolitan Area Planning Department

**Agenda:** Planning (Consent)

---

**Staff Recommendation:** Approve.

**MAPC Recommendation:** Approve (unanimously).

**Background:** The applicant proposes to vacate the south 3 feet of the platted 15-foot setback on the SF-5 zoned corner lot, thus making a 12-foot street side yard setback. This setback runs parallel to the north lot line of Lot 20, Block F, Gary's 4<sup>th</sup> Addition and the south side of the 36<sup>th</sup> Street South right-of-way (ROW). Per the Unified Zoning Code (UZC Art.III, Sec.III-E, e (6)), the short side of a corner lot shall have the front yard setback. The short side of this lot is the Dugan Avenue side, thus the 36<sup>th</sup> Street South side is the street side yard setback. The UZC has a 15-foot minimum street side yard setback for the SF-5 zoning district. If this was not a platted setback, but the UZC's required 15-foot minimum street side yard setback for the SF-5 zoning district, the applicant could have applied for an Administrative Adjustment. The adjustment would reduce the UZC's 15-foot minimum street side yard setback by 20 percent; resulting in a 12-foot setback, which is what the applicant is requesting. There are no platted easements within the platted setback. There are no utilities, manholes, sewer or water lines within the described portion of the platted setback. The Gary's 4<sup>th</sup> Addition was recorded with the Register of Deeds on May 20, 1988.

**Analysis:** The MAPC voted (12-0) to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

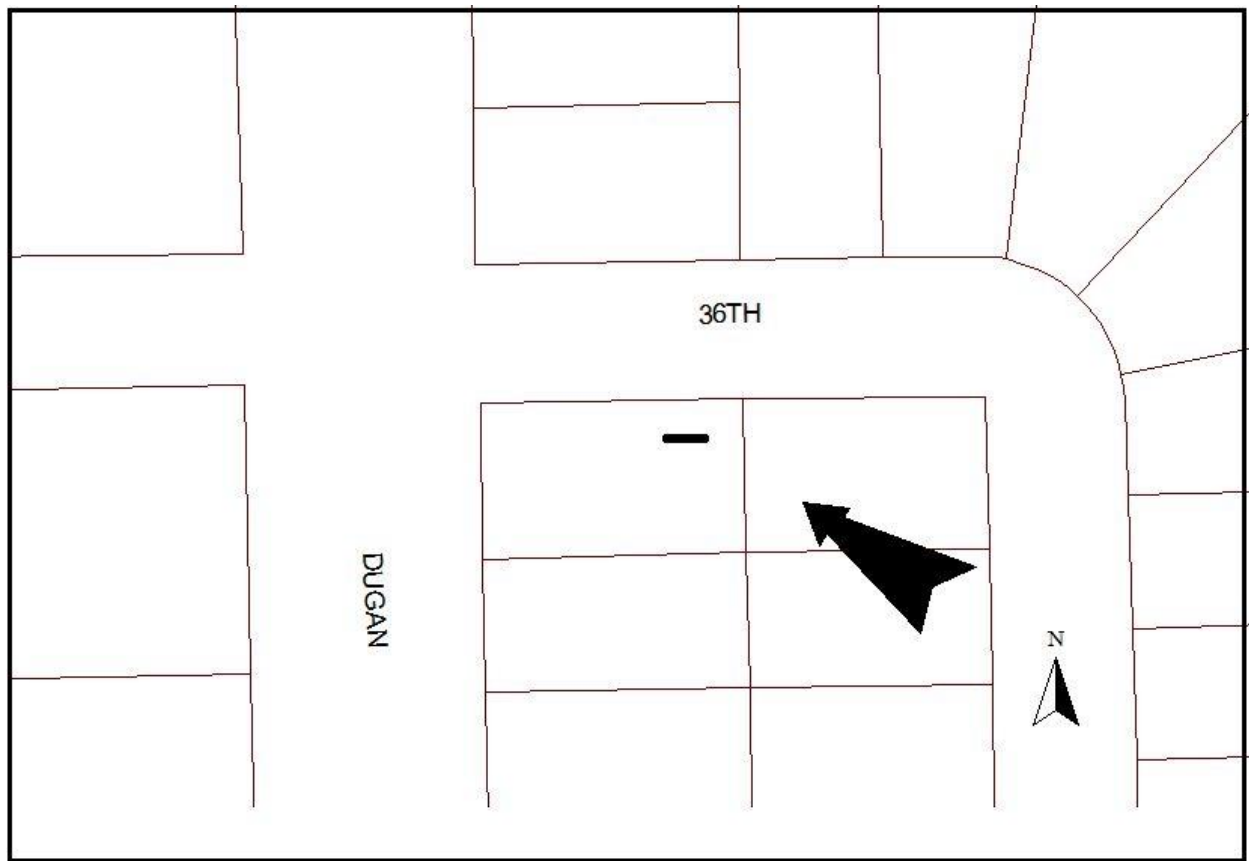
**Financial Considerations:** None.

**Goal Impact:** Ensure efficient infrastructure.

**Legal Considerations:** A certified copy of the Vacation Order will be recorded with the Register of Deeds.

**Recommendation/Actions:** Follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order, and authorize the necessary signatures.

**Attachments:** None.



**PRELIMINARY ESTIMATES  
FOR CITY COUNCIL NOVEMBER 17, 2009**

- a. Asphalt Mill & Overlay on Broadway, Central to 12th (ARRA) (87N-0497-01/472-84845/991301/991301) Traffic to be maintained using flagpersons and barricades. (District VI) - \$553,245.00
- b. Concrete Pavement Repair on Washington, 1st Street to Central (ARRA) (87N-0501-01/472-84846/991302/991302) Traffic to be maintained using flagpersons and barricades. (District I,VI) - \$485,212.00
- c. Lateral 2, Main 23 Southwest Interceptor Sewer to serve Emerald Bay and Emerald Bay 2nd Additions (west of West Street, north of 21st Street North) (468-84209/744309/480001) Does not affect existing traffic. (District VI) - \$285,000.00
- d. Wayfinding Signage for Intrust Bank Arena, Phase 2 (north of Kellogg, east of Seneca) (472-84843a/707008/209473) Maintain traffic using flagpersons & barricades. (District I,III,IV,VI) - \$400,000.00
- e. Wichita-Valley Center Local Flood Protection, Levee "S" (Phase 2) (east of Broadway Avenue, west of Hydraulic Avenue along the Arkansas River) (468-84626/660811/869001) Local traffic maintained with minimal street closures not to exceed 48 hours. (District III) - \$3,687,922.00
- f. 2009 CIP Arterial Street Repair Phase 1, Lincoln & Hillside Intersection (Lincoln & Hillside and south of Hillside to Bayley) (472-84815/707006/620535/209471/669653) Traffic to be maintained using flagpersons & barricades. (District I,III) - \$204,500.00
- g. Railroad Track Removal (east of Tyler, north of MacArthur) (472-84873/706910/132722/204376) Traffic to be maintained using flagpersons & barricades. (District ) - \$158,900.00
- h. 2008 Traffic Signalization Phase 2, Pawnee & Webb (472-84720a/706979/707012/208444/209477) Traffic to be maintained using flagpersons & barricades. (District II) - \$172,870.00
- i. The cost of construction of Storm Water Drain No. 287 to serve The Woods Addition (east of 151st Street West, north of Maple). (District V) (468-84131/751465/485-356) – Total Estimated Cost \$1,024,850.00
- j. The cost of New Jersey Drive from the northwest corner of Lot 4 of the Washington Heights Replat of Blocks I & J to the northwest corner of Lot 12, Block D of Washington Heights Addition; Valley Forge Road from the northeast corner of Lot 7, Block H of Washington Heights Addition to 31st Street South; Brandywine Road from the southwest corner of Lot 18, Block H of Washington Heights Addition to the northeast corner of Lot 16, Block D of

- Washington Heights Addition (east of Oliver, north of 31st Street South). (472-84718/766216 & 636222/490234 & 779611) (District III). – Total Estimated Cost \$8,480.00
- k. The cost of 37th Street South, Flora Avenue and York Street to serve Skyline Heights Addition and Wheatland Place Addition (north of MacArthur, east of Hoover). (472-84443/766121/490-139) (District IV). – Total Estimated Cost \$560,900.00
  - l. The cost of Lateral 274, Main 5, Sanitary Sewer No. 22 to serve R.A. Morris Tracts Addition (south of 13th Street North, west of West Street). (468-84016/744136/480-824) (District V). – Total Estimated Cost \$59,225.00
  - m. The cost of construction of Storm Water Drain No. 342 to serve Waterfront Residential Addition and Waterfront 6th Addition (north of 13th Street North, west of Greenwich). (District II) (468-84449/751459/485-350) – Total Estimated Cost \$265,200.00
  - n. The cost of Lateral 524, Southwest Interceptor Sewer to serve Lubbers Addition, Pinkstons 2nd Addition and Douty Addition (north of 31st Street South, east of Hoover). (468-84397/744249/480-937) (District IV). – Total Estimated Cost \$48,200.00
  - o. The cost of Lateral 532 Southwest Interceptor Sewer to serve BG's 1st Addition (south of MacArthur, west of Hoover). (468-84617/744306/480-995) (District IV). – Total Estimated Cost \$39,400.00

### STATEMENTS OF COSTS:

- a. **West Street from Maple to Central (Design and Right-of-way).** Total Cost - \$2,230,000.00; (plus temporary note financing - \$18,929.09; plus idle fund interest - \$37,370.91; less interfund transfers - \$1,429,000.00; less transfers in - \$804,000.00). Financing to be issued at this time – \$53,300.00. (706890/472-83997/204-356).
- b. **17th and Hillside Intersection (Design).** Total Cost - \$177,367.84; (plus temporary note financing - \$905.47; less idle fund interest - \$373.31; less interfund transfers - \$10,000.00; less transfers in - \$25,000.00). Financing to be issued at this time – \$142,900.00. (706908/472-84015/204-374).
- c. **13th Street North and Broadway Intersection (Construction).** Total Cost - \$1,798,334.17; (plus temporary note financing - \$15,390.32; plus idle fund interest - \$24,850.23; less KDOT reimbursements - \$710,274.72; less interfund transfers - \$477,900.00; less transfers in - \$456,700.00). Financing to be issued at this time – \$193,700.00. (706925/472-84178/205-391).
- d. **Mt. Vernon between Broadway and the Arkansas River (Design and Construction).** Total Cost - \$4,240,664.24; (plus temporary note financing - \$20,935.79; plus idle fund interest - \$11,699.97; less transfers in - \$137,000.00). Financing to be issued at this time – \$4,136,300.00. (706946/472-84289/205-412).
- e. **Douglas and Oliver Intersection (Construction).** Total Cost - \$1,434,254.31; (plus temporary note financing - \$7,245.33; plus idle fund interest - \$10,700.36; less transfers in - \$25,000.00). Financing to be issued at this time – \$1,427,200.00. (706970/472-84609/207-436).
- f. **Stryker Soccer Complex West Parking Lot Expansion (Construction).** Total Cost - \$317,911.01; (plus temporary note financing - \$1,566.24; plus idle fund interest - \$1,022.75; less transfers in - \$15,000.00). Financing to be issued at this time – \$305,500.00. (785066/472-84573/395-198).
- g. **Century II Airhandlers (Construction).** Total Cost - \$299,670.09; (plus temporary note financing - \$0; less idle fund interest - \$329.91; less transfers in - \$60,000.00; less financing previously issued - \$0). Financing to be issued at this time – \$240,000.00. (792506/435-428).

### PARTIAL STATEMENTS OF COST:

- h. Partial Estimate of Cost for improving **Oliver, Harry to Kellogg (Design)** – Total Cost - \$255,300; less financing previously issued - \$234,800. Financing to be issued at this time - \$20,500. (706895/472-84018/204-361).
- i. Partial Estimate of Cost for improving **17th, Broadway to I-135 (Design)** – Total Cost - \$148,300; less financing previously issued - \$125,000. Financing to be issued at this time - \$23,300. (706903/472-84014/204-369).
- j. Partial Estimate of Cost for improving **13th and Mosley Intersection (Construction)** – Total Cost - \$190,100; less financing previously issued - \$124,000. Financing to be issued at this time - \$66,100. (706931/472-84269/205-397).

- k. Partial Estimate of Cost for improving **21st, Waco to Broadway (Design and Construction)** – Total Cost - \$2,181,000; less financing previously issued - \$877,100. Financing to be issued at this time - \$1,303,900. (706934/472-84295/205-400).
- l. Partial Estimate of Cost for improving **47th Street South, Meridian to Seneca (Design and Construction)** – Total Cost - \$139,400; less financing previously issued - \$104,000. Financing to be issued at this time - \$35,400. (706935/472-84296/205-401).
- m. Partial Estimate of Cost for improving **Greenwich, Harry to Kellogg (Design and Construction)** – Total Cost - \$351,100; less financing previously issued - \$242,600. Financing to be issued at this time - \$108,500. (706941/472-84301/205-407).
- n. Partial Estimate of Cost for improving **Hydraulic, Harry to Kellogg (Design and Construction)** – Total Cost - \$199,300; less financing previously issued - \$60,900. Financing to be issued at this time - \$138,400. (706942/472-84310/205-408).
- o. Partial Estimate of Cost for improving **Meridian, 47th Street South to 31st Street South (Design and Construction)** – Total Cost - \$712,400; less financing previously issued - \$155,500. Financing to be issued at this time - \$556,900. (706944/472-84302/205-410).
- p. Partial Estimate of Cost for improving **Meridian, Pawnee to Orient (Design and Construction)** – Total Cost - \$566,000; less financing previously issued - \$44,200. Financing to be issued at this time - \$521,800. (706945/472-84309/205-411).
- q. Partial Estimate of Cost for improving **Pawnee, K-15 to Hillside (Design)** – Total Cost - \$80,000; less financing previously issued - \$68,800. Financing to be issued at this time - \$11,200. (706947/472-84303/205-413).
- r. Partial Estimate of Cost for improving **17th Street North, Broadway to I-135 (Construction)** – Total Cost - \$569,536; less financing previously issued - \$55,636. Financing to be issued at this time - \$513,900. (706953/472-84392/206-419).
- s. Partial Estimate of Cost for improving **2006/2007 Traffic Signalization (Design and Construction)** – Total Cost - \$1,017,700; less financing previously issued - \$359,000. Financing to be issued at this time - \$658,700. (706956/472-84424/206-422).
- t. Partial Estimate of Cost for improving **Int. Transportation System Traffic Signals (Design and Construction)** – Total Cost - \$494,028; less State Operating Grants - \$156,728; less Federal to State Revenues - \$299,490; less other County aide - \$5,316; less financing previously issued - \$11,000. Financing to be issued at this time - \$337,300. (706960/472-84446/206-426).
- u. Partial Estimate of Cost for improving **MacArthur, Meridian to Seneca (Construction)** – Total Cost - \$3,903,142; less KDOT Reimbursements - \$2,903,142; less financing previously issued - \$0. Financing to be issued at this time - \$1,000,000. (706966/472-84580/207-432).
- v. Partial Estimate of Cost for improving **55th Street South and Broadway Intersection (Construction)** – Total Cost - \$313,500; less financing previously issued - \$204,000. Financing to be issued at this time - \$109,500. (706967/472-84581/207-433).
- w. Partial Estimate of Cost for improving **Midtown Bike Path (Design and Construction)** – Total Cost - \$1,525,750; less KDOT Reimbursements - \$995,884; less Federal to State Revenues - \$74,166; less fi-

financing previously issued - \$0. Financing to be issued at this time - \$455,700. (706968/472-84562/207-434).

- x. Partial Estimate of Cost for improving **Harry, Turnpike to Rock (Design and Construction)** – Total Cost - \$142,600; less financing previously issued - \$90,100. Financing to be issued at this time - \$52,500. (706969/472-84577/207-435).
- y. Partial Estimate of Cost for improving **2007-2008 Sidewalk and Wheelchair Ramp (Construction)** – Total Cost - \$457,200; less financing previously issued - \$165,000. Financing to be issued at this time - \$292,200. (706971/472-84604/207-437).
- z. Partial Estimate of Cost for **2007-2008 Railroad Crossing Improvement (Construction)** – Total Cost - \$189,000; less financing previously issued - \$0. Financing to be issued at this time - \$189,000. (706972/472-84629/207-438).
- aa. Partial Estimate of Cost for improving **21st Street from K-96 to 159th Street East (Design and Construction)** – Total Cost - \$7,436,065; less KDOT Reimbursements - \$5,936,065; less financing previously issued - \$0. Financing to be issued at this time - \$1,500,000. (706973/472-84636/207-439).
- bb. Partial Estimate of Cost for improving **Central and Tyler Intersection (Construction)** – Total Cost - \$2,628,499; less KDOT Reimbursements - \$749,812; less Federal to State Revenues - \$49,687; less financing previously issued - \$29,000. Financing to be issued at this time - \$1,800,000. (706974/472-84655/208-440).
- cc. Partial Estimate of Cost for improving **Maize, Pawnee to Kellogg (Design and Construction)** – Total Cost - \$216,700; less financing previously issued - \$0. Financing to be issued at this time - \$216,700. (706976/472-84697/208-442).
- dd. Partial Estimate of Cost for improving **37th Street North, Tyler to Maize (Design and Construction)** – Total Cost - \$1,705,800; less financing previously issued - \$1,400,000. Financing to be issued at this time - \$305,800. (706977/472-84693/208-443).
- ee. Partial Estimate of Cost for improving **2008 Traffic Signal Program (Design and Construction)** – Total Cost - \$251,000; less financing previously issued - \$32,100. Financing to be issued at this time - \$218,900. (706979/472-84720/208-444).
- ff. Partial Estimate of Cost for improving **2008 Street Rehab Program (Construction)** – Total Cost - \$373,600; less State Operating Grants - \$0; less financing previously issued - \$173,600. Financing to be issued at this time - \$200,000. (706980/472-84725/208-445).
- gg. Partial Estimate of Cost for improving **I-135 Bike Path, McAdams to Grove (Design and Construction)** – Total Cost - \$99,900; less financing previously issued - \$52,200. Financing to be issued at this time - \$47,700. (706982/472-84740/208-447).
- hh. Partial Estimate of Cost for improving **Greenwich, Pawnee to Harry (Design)** – Total Cost - \$136,700; less financing previously issued - \$0. Financing to be issued at this time - \$136,700. (706985/472-84695/208-450).
- ii. Partial Estimate of Cost for improving **Harry, Greenwich to 127th Street East (Design)** – Total Cost - \$175,700; less financing previously issued - \$0. Financing to be issued at this time - \$175,700. (706986/472-84696/208-451).

- jj. Partial Estimate of Cost for improving **Mt. Vernon, Broadway to Southeast Boulevard (Design)** – Total Cost - \$56,300; less financing previously issued - \$32,000. Financing to be issued at this time - \$24,300. (706987/472-84699/208-452).
- kk. Partial Estimate of Cost for improving **29th Street, Ridge to Hoover (Design)** – Total Cost - \$19,800; less financing previously issued - \$0. Financing to be issued at this time - \$19,800. (706989/472-84691/208-454).
- ll. Partial Estimate of Cost for improving **Maple, 135th Street West to 151st Street West (Design)** – Total Cost - \$53,300; less financing previously issued - \$37,400. Financing to be issued at this time - \$15,900. (706990/472-84698/208-455).
- mm. Partial Estimate of Cost for improving **Tyler, 29th Street North to 37th Street North (Design)** – Total Cost - \$76,600; less financing previously issued - \$0. Financing to be issued at this time - \$76,600. (706991/472-84700/208-456).
- nn. Partial Estimate of Cost for improving **Eastbank River Corridor, north of Douglas (Design and Construction)** – Total Cost - \$83,700; less financing previously issued - \$53,400. Financing to be issued at this time - \$30,300. (706994/472-84767/208-459).
- oo. Partial Estimate of Cost for improving **17th and Hillside Intersection (Construction)** – Total Cost - \$130,000; less Federal to State Revenues - \$0; less financing previously issued - \$0. Financing to be issued at this time - \$130,000. (706996/472-84766/208-461).
- pp. Partial Estimate of Cost for improving **47th, I-135 to Broadway (Construction)** – Total Cost - \$722,000; less Reimbursements - \$0; less financing previously issued - \$500,000. Financing to be issued at this time - \$222,000. (707004/472-84795/209-469).
- qq. Partial Estimate of Cost for improving **Arkansas River Pedestrian Bridges (Design and Construction)** – Total Cost - \$8,423,413; less KDOT Reimbursements - \$2,798,213; less financing previously issued - \$3,325,200. Financing to be issued at this time - \$2,300,000. (715691/472-83416/242-107).
- rr. Partial Estimate of Cost for improving **13th Street Bridge at the Little Arkansas (Design and Construction)** – Total Cost - \$3,047,100; less KDOT Reimbursements - \$999,500; less financing previously issued - \$687,000. Financing to be issued at this time - \$1,360,600. (715705/472-84314/245-121).
- ss. Partial Estimate of Cost for improving **Hillside Bridge at Gypsum Creek (Design and Construction)** – Total Cost - \$1,288,764; Less KDOT Reimbursements - \$898,764; less financing previously issued - \$100,000. Financing to be issued at this time - \$290,000. (715711/472-84395/246-127).
- tt. Partial Estimate of Cost for improving **21st Street Bridge at Ark River (Construction)** – Total Cost - \$1,965,908; less KDOT Reimbursements - \$1,507,257; less Federal to State Revenues - \$7,651; less financing previously issued - \$151,000. Financing to be issued at this time - \$300,000. (715713/472-84569/247-129).
- uu. Partial Estimate of Cost for improving **25th Street Bridge over Little Ark River (Construction)** – Total Cost - \$289,367; less Federal to State Revenues - \$192,667; less financing previously issued - \$0. Financing to be issued at this time - \$96,700. (715715/472-84595/247-131).



- vv. Partial Estimate of Cost for improving **Lincoln Street Bridge at Ark River (Design)** – Total Cost - \$170,700; less financing previously issued - \$51,000. Financing to be issued at this time - \$119,700. (715716/472-84605/247-132).
- ww. Partial Estimate of Cost for improving **31st Street Bridge at Glenn (Design)** – Total Cost - \$43,800; less financing previously issued - \$0. Financing to be issued at this time - \$43,800. (715718/472-84702/248-134).
- xx. Partial Estimate of Cost for improving **River Corridor (Design and Construction)** – Total Cost - \$19,007,900; less Federal to State Reimbursements - \$0; less financing previously issued - \$15,397,000. Financing to be issued at this time - \$3,610,900. (706556/472-82799/405-209).

City of Wichita  
City Council Meeting  
November 17, 2009

**TO:** Mayor and City Council

**SUBJECT:** Community Events – A Night with Santa  
(Districts I and VI)

**INITIATED BY:** Division of Arts & Cultural Services

**AGENDA:** Consent

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**Recommendation:** Approve the request for temporary street closures.

**Background:** In accordance with the Community Events procedure the City of Wichita Park and Recreation Department is coordinating with City of Wichita staff, subject to final approval by the City Council.

**Analysis:** The following temporary street closure request has been submitted:

**A Night with Santa December 3, 2009 5:30 pm – 7:00 pm**

- Douglas Avenue, Main Street to McLean Blvd.
- McLean Blvd., Douglas to 1<sup>st</sup>/2<sup>nd</sup> Street
- Waco, Douglas to 1<sup>st</sup> Street (Access from 1<sup>st</sup> Street to the Broadview Hotel)
- 1<sup>st</sup> Street, Waco to McLean Blvd.
- Sycamore, Douglas to McLean Blvd.
- Century II Drive from W. Tlalnepantla Dr. to Douglas Avenue
- South Cancun St., Century II Drive to W. Tlalnepantla Dr.
- North Civic Center Place, north side of Douglas
- Wichita Street, north side of Douglas
- Water Street, north side of Douglas

Client will arrange to remove blockades as necessary to allow emergency vehicle access during entire designated time period. Blockades will be removed immediately upon completion of the event.

**Financial Consideration:** The event sponsor is responsible for all costs associated with special event.

**Goal Impact:** Enhance the Quality of Life

**Legal Consideration:** None

**Recommendation/Actions:** It is recommended that the City Council approve the request subject to: (1) hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department.

**City of Wichita**  
**City Council Meeting**  
November 17, 2009

**TO:** Mayor and City Council

**SUBJECT:** Remediation of 149 and 157 South Washington for the Gilbert & Mosley Site (District III)

**INITIATED BY:** Environmental Services Department

**AGENDA:** Consent

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**Recommendations:** Approve the technical services contract

**Background:** The City of Wichita, under an agreement with the Kansas Department of Health and Environment (KDHE), has the responsibility to address groundwater contamination within the Gilbert & Mosley Site. The City has already constructed a groundwater remediation system at the W.A.T.E.R. Center that is containing and mitigating area-wide contamination by treating the multiple migrating plumes. As required by KDHE, the next step in the project is to remediate source areas that are causing a continuing groundwater contamination contribution.

As required, two adjacent source areas, 149 South Washington and 157 South Washington, were extensively investigated by the City and a Source Control Measures Evaluation report was submitted and approved by KDHE. Further, the City's recommended remedial action was approved in KDHE's Corrective Action Decision (CAD) dated October 6, 2005. The remedial action includes:

- Investigate to further delineate on-site soil and groundwater contamination,
- Excavate solvent contaminated soils from 149 and 157 South Washington,
- Treat the site with soil vapor extraction and electrical resistive heating.

**Analysis:** A request for proposal was prepared and released for technical services for this project. The selection process was conducted in accordance with Administrative Regulation 1.2, Contracting for Professional Services, and a Staff Screening and Selection Committee (SSSC) was convened on January 23, February 26, March 4, and April 22, 2009. The SSSC reviewed six proposals and determined that five met the identified qualifications. The SSSC interviewed each consultant and selected Burns & McDonnell based upon the technical proposal qualifications, interview, and cost effectiveness. The SSSC selection process was reviewed and approved by the City's internal auditor.

**Goal Impact:** Ensure efficient infrastructures by maintaining and optimizing public facilities and assets.

**Financial Considerations:** Cost for this activity is not to exceed \$624,060 and is within the current project budget funded by the Gilbert & Mosley Groundwater Remediation TIF.

**Legal Considerations:** The Law Department has approved the contract as to form.

**Recommendation/Actions:** It is recommended the City Council approve the contract and authorize the necessary signatures.

**Attachment:** Burns & McDonnell Technical Services Contract



## CONTRACT

123-032

**THIS AGREEMENT** made and entered into this \_\_\_\_ day of \_\_\_\_\_, A.D. 2009, by and between the City of Wichita, a municipal corporation, hereinafter known as First Party, and

**Burns & McDonnell Engineering Company Inc.**

whose principal office is at **9400 Ward Parkway, Kansas City, Missouri 64114-3319** hereinafter known as the Second Party.

**WITNESSETH**, That for and in consideration of covenants hereinafter set out the Second Party contracts, promises and agrees to and with the First Party that Burns & McDonnell Engineering Company Inc. will furnish all the material and labor necessary to provide Remedial Action at 149 South Washington and 157 South Washington on Formal Proposal FP800114 in the City of Wichita, Sedgwick County, Kansas, according to plans and specifications and the proposal of said Second Party therefore, which plans and specifications and proposal are on file in the office of the Finance Department/Purchasing Manager of said City, and are hereby made a part of this contract to the same effect and as fully embodied herein.

Second Party further agrees that the work under this contract shall be completed to the full satisfaction of the City Purchasing Manager of the City of Wichita on or before September 30, 2011 for completion. The contract is subject to cancellation by the First Party at its discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the Second Party.

Second party further agrees that at all times during the prosecution of said improvement, Burns & McDonnell Engineering Company Inc. will maintain the proper safeguards, barricades and lights on the work and every portion thereof to insure the highest degree of safety to the public and that Burns & McDonnell Engineering Company Inc. will hold the City of Wichita harmless in all claims and suits for damages brought against either of the parties to this contract on account of the negligent acts, omissions or default of said Second Party, their agents or servants in the prosecution of the work on said improvement.

Second Party further agrees to maintain said improvement for a period of one (1) year from date of the completion and acceptance of same by the City of Wichita, this maintenance to be done and performed by said Second Party without any expense to the First Party whatever.

For and in consideration of covenants promised and agreed to by the Second Party, the First Party will pay to Second Party the following prices per unit for work commenced and completed . The quantities are estimates only; the City reserves the right to adjust the quantities as necessary to meet the demands of this project and to add or delete additional work to the contract to expend an amount not to exceed \$624,060.00 as per Exhibit B.

The Second Party shall be entitled to partial and final payments in accordance with the provisions of the Standard Specifications, project plans and special provisions applicable to the project.

The Second Party shall save and hold the First Party harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of Second Party, its officers, agents, servants, or employees, occurring in the performance of its services under this contract, or arising from any defect in the materials or workmanship of any product provided in the performance of this contract.

The Second Party further agrees, notwithstanding anything to the contrary contained in the proposal documents or the contract to be awarded herein, that the City shall not be subject to arbitration and any clause relating to arbitration contained in the documents or in the contract to be awarded herein between the parties shall be null and void and either party shall have the right to litigate any dispute in a court of law.

The parties agree that this agreement is made in the State of Kansas, and its provisions shall be governed by the laws of the State of Kansas.

The contractor, in performing the work required under this contract, agrees to comply with the provisions of the "Revised Non-Discrimination and Equal Employment Opportunity Statement for Contracts or Agreement" of the City of Wichita, which is incorporated herein by reference.

For good cause, and as consideration for executing this contract, the contractor, acting herein by and through its authorized agent, hereby conveys, sells, assigns, and transfers to the City of Wichita all right, title, and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Kansas relating to the particular product, products, or services purchased or acquired by the City of Wichita pursuant to this contract.

IN WITNESS WHEREOF, the City of Wichita has caused these presents to be signed by its Mayor and attested by its Clerk with the seal of the City of Wichita impressed thereon, and the Second Party has caused these presents to be duly executed the day and year first herein written.

Attest:

City of Wichita, Kansas

\_\_\_\_\_  
Deputy City Clerk

Approved as to form this \_\_\_\_\_

\_\_\_\_\_  
Carl G. Brewer, Mayor

*J. David Langford*  
\_\_\_\_\_  
Burns & McDonnell Engineering Company Inc.

By *Associate Vice President*  
\_\_\_\_\_  
(print or type name and title of authorized agent)

*Mary E. Peasley*  
\_\_\_\_\_  
Director of Law

SUPPLEMENTAL AND SPECIAL CONDITIONS - follow and attached:

## **SUPPLEMENTAL AND SPECIAL CONDITIONS -**

I. The following are mutually agreed to terms from previously negotiated and executed agreements between the City of Wichita (First Party) and Burns & McDonnell Engineering, Company, Inc (Second Party).

First Party agrees to furnish all available information and data pertaining to the PROJECT now in the First Party's possession and Second Party may rely on such information and data as accurate without having to take steps to verify the same except as new information is found, plans will be adjusted.

It is specifically agreed between the parties executing this agreement that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third-party-beneficiary hereunder, to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

To the fullest extent permitted by Laws or Regulations, First Party shall indemnify and hold harmless Second Party, Subcontractors, Suppliers and the officers, directors, partners, employees, agents, other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from such Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Contract Documents to be included in the scope of the Work, and (ii) was not created by Second Party or by anyone for whom Second Party is responsible. Nothing in this paragraph shall obligate First Party to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

To the fullest extent permitted by Laws or Regulations, Second Party shall indemnify and hold harmless First Party, First Party's Consultant and the officers, directors, partners, employees, agents, other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from such Hazardous Environmental Condition created by Second Party or anyone for whom Second Party is responsible. Nothing in this paragraph shall obligate Second Party to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

First Party waives all rights against Second Party, Subcontractors, and Suppliers and the officers, directors, employees and agents of any of them for loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to the Second Party's property caused by, arising out of or resulting from fire or other peril whether or not insured by Second Party.

Standard of Care. The standard of care for Design Professional Services performed or furnished under this Agreement will be the care and skill ordinarily used by members of the engineering profession practicing under similar conditions at the same time and locality.

First Party shall furnish access to the Site in a timely manner so as not to delay the services of Second Party.

Progress Payments. First Party will, within ten days of receipt of each Application for Payment, indicate acceptance of the Application, or return the Application to Second Party indicating in writing its reasons for refusing to accept the Application. First Party will provide payment to Second Party within 30 days of acceptance of Application.

II. Consequential Damages: In no event will the Second Party be liable for any special, indirect, or consequential damages including, without limitation, damages of losses in the nature of increased Project costs, loss of revenue or profit, claims by customers of the First Party or governmental fines or penalties.

III. Limitation of Liability: Second Party's aggregate liability for all damages connected with its services for the Project will not exceed the amount of \$2,000,000. The obligations and remedies state in this Agreement are the sole and exclusive obligations of Second Party's and remedies of First Party regardless of the cause of action pled including,

without limitation, negligence of every character.

IV. The following are mutually agreed to insurance amounts between the First Party and Second Party.

The Second Party shall procure and maintain such insurance as will protect the Second Party from damages resulting from the negligent acts, errors, or omissions of the Second Party, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this Agreement and for which it is legally liable. Such Professional Liability Insurance policy shall be in an amount of \$2,000,000 aggregate subject to a deductible of \$100,000 each and every claim. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained.

Insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall not be less than:

Comprehensive General Liability covering premises—operations, xcu (explosion, collapse and underground) hazards when applicable, Product/Completed operations, Broad Form Property Damage, and Contractual Liability with minimum limits as follows:

|                         |                                                       |
|-------------------------|-------------------------------------------------------|
| Bodily Injury Liability | \$500,000 each occurrence<br>\$500,000 each aggregate |
|-------------------------|-------------------------------------------------------|

|                           |                                                       |
|---------------------------|-------------------------------------------------------|
| Property Damage Liability | \$500,000 each occurrence<br>\$500,000 each aggregate |
|---------------------------|-------------------------------------------------------|

Or

|                                                                     |                                                       |
|---------------------------------------------------------------------|-------------------------------------------------------|
| Bodily Injury and Property Damage Liability (Combined Single Limit) | \$500,000 each occurrence<br>\$500,000 each aggregate |
|---------------------------------------------------------------------|-------------------------------------------------------|

Automobile Liability - Comprehensive Form including all owned, hired and non-owned vehicles with minimum limits for:

|                           |                         |
|---------------------------|-------------------------|
| Bodily Injury Liability   | \$500,000 each accident |
| Property Damage Liability | \$500,000 each accident |

Or

|                                                                     |                         |
|---------------------------------------------------------------------|-------------------------|
| Bodily Injury and Property Damage Liability (Combined Single Limit) | \$500,000 each accident |
|---------------------------------------------------------------------|-------------------------|

3. Workers' Compensation/Employers Liability for minimum limits of:

|                     |                         |
|---------------------|-------------------------|
| Employers Liability | \$100,000 each accident |
|---------------------|-------------------------|

The Insurance Certificate must contain the following:

- A. Statement that the Contractual Liability includes the Liability of the First Party assumed by the Second Party in the contract documents.
- B. Cancellation – should any of the above policies be canceled before the expiration date thereof the issuing company will mail ten (10) days written notice to certificate holder.

EXHIBIT B

**Table 1**  
**Work Effort**  
**Remedial Action South Washington and English (SWE) Site**  
**Wichita, Kansas**

| Task                | Description                                         | Category               | Labor Hours | Labor Cost  | Expenses     | Cost         |
|---------------------|-----------------------------------------------------|------------------------|-------------|-------------|--------------|--------------|
| 1.0                 | Remedial Action Work Plan                           | Associate<br>Assistant | 12<br>30    |             |              |              |
| Task Subtotal:      |                                                     |                        | 42          | \$4,520.00  | \$500.00     | \$5,020.00   |
| 2.0                 | Soil and Groundwater Investigation                  | Associate<br>Assistant | 18<br>50    |             |              |              |
| Task Subtotal:      |                                                     |                        | 68          | \$11,090.00 | \$44,650.00  | \$55,740.00  |
| 3.0                 | Remedial Design                                     | Associate<br>Assistant | 30<br>80    |             |              |              |
| Task Subtotal:      |                                                     |                        | 110         | \$11,680.00 | \$1,550.00   | \$13,230.00  |
| 4.0                 | Excavate and Disposal of Sumps, Pits, Shallow Soils | Associate<br>Assistant | 24<br>92    |             |              |              |
| Task Subtotal:      |                                                     |                        | 116         | \$12,150.00 | \$51,030.00  | \$63,180.00  |
| 5.0                 | SVE and Thermal Treatment of Soils                  | Associate<br>Assistant | 60<br>160   |             |              |              |
| Task Subtotal:      |                                                     |                        | 220         | \$23,360.00 | \$368,430.00 | \$391,790.00 |
| 6.0                 | Groundwater Monitoring Program                      | Associate<br>Assistant | 8<br>40     |             |              |              |
| Task Subtotal:      |                                                     |                        | 48          | \$4,610.00  | \$8,460.00   | \$13,070.00  |
| 7.0                 | Operation and Maintenance                           | Associate<br>Assistant | 120<br>450  |             |              |              |
| Task Subtotal:      |                                                     |                        | 570         | \$53,120.00 | \$6,660.00   | \$59,780.00  |
| 8.0                 | System Decommission                                 | Associate<br>Assistant | 40<br>80    |             |              |              |
| Task Subtotal:      |                                                     |                        | 120         | \$13,440.00 | \$8,810.00   | \$22,250.00  |
| Total Project Cost: |                                                     |                        |             |             |              | \$624,060.00 |



**City of Wichita  
City Council Meeting  
November 17, 2009**

**TO:** Mayor and City Council

**SUBJECT:** W.A.T.E.R. Center Exhibits (District III)

**INITIATED BY:** Environmental Services Department

**AGENDA:** Consent

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**Recommendations:** Approve the technical services contract

**Background:** The environmental education component of the Wichita Area Treatment, Education and Remediation (W.A.T.E.R.) Center, located at 101 East Pawnee, addresses public education regarding groundwater remediation and the inter-relationship between groundwater and the Arkansas River. The facility provides a unique educational destination for schools, civic groups, and the general public.

In 2002, the Environmental Services (ES) Department competitively bid and selected Taylor Studios Inc. (TSI) to create conceptual designs for water education exhibits for the WATER Center. On November 28, 2006 a conceptual exhibit plan prepared by TSI was approved by the City Council. In a workshop update on June 19, 2007, the Council recommended that ES seek outside grants and sponsors to fund the exhibits. ES is in the process of completing the exhibits in a phased approach.

As approved by the Council, ES applied for and secured funding for two exhibits in the amount of \$66,000:

- Kansas Health Foundation Recognition Grant request for \$25,000 (application approved by Council on September 9, 2008 and awarded November 2008)
- Museums for America Grant request for \$33,000 (application approved by Council on October 28, 2008 and awarded August 2009)
- W.A.T.E.R. Center donation fund for \$8,000 (match approved by Council on September 9, 2008)

These funding sources allow the completion of the design and fabrication of two exhibits at the WATER Center called, “Opposites Attract” and “Protecting the Water”.

**Analysis:** In accordance with the grant applications, the Environmental Services Department requests authorization for a contract with Taylor Studios Inc. in the amount not to exceed \$66,000. Technical services provides for the design and fabrication of the two exhibits called, “Opposites Attract” and “Protecting the Water”.

**Goal Impact:** Enhance quality of life by educating citizens on water pollution and conservation concepts to protect the City of Wichita’s natural resources.

**Financial Considerations:** The Environmental Services Department has secured outside funding totaling \$66,000. Funding sources are described above and have been reviewed by the Finance Department.

**Legal Considerations:** The Law Department has reviewed and approved documents as to form.

**Recommendation/Actions:** It is recommended the City Council approve the technical services contract and authorize the necessary signatures.

**Attachments:** Technical Services Contract for Taylor Studios Inc.



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## PROFESSIONAL SERVICES AGREEMENT FOR INTERPRETIVE DESIGN & PRODUCTION

This Agreement is between City of Wichita, The WATER Center (“Client”), 101 E. Pawnee, Wichita, KS, 67211 and Taylor Studios, Inc. (“Taylor Studios”), 1320 Harmon Drive, Rantoul, Illinois, 61866, and provides the terms and conditions according to which Taylor Studios will provide Interpretive Design and Production services to Client.

In consideration of the mutual covenants contained in this Agreement, Client and Taylor Studios agree as follows:

### **Project Definitions and Scope of Work:**

The term “Client’s Project Manager” refers to a Client representative with authority to act on behalf of the Client and is responsible for the overall coordination of the Project on Client’s behalf, including but not limited to coordination, decision-making and maintaining the schedule as set forth in this Agreement. The Client’s Project Manager shall be a member of the “Project Team”.

The term “Project Team” refers to a group of people designated and authorized by both Client and Taylor Studios to share ideas to better articulate Client’s intent and objectives pursuant to this Agreement. Within a reasonable amount of time after this Agreement is signed, Client and Taylor Studios will provide a list of persons to the other party identifying the persons who shall be members of the Project Team. The persons listed by either party may change as deemed necessary and appropriate by either party. The Project Team is an important aspect to this Agreement in order to share ideas and to inform Taylor Studios of Client’s objectives.

The term “Project Schedule” refers to a series of specific dates which reflect the parties’ intent as to when particular phases of this Agreement will be performed by both parties, as more specifically set forth in Article 4, Section A.

The term “Final Design Documents” refers to the documents generated by Taylor Studios pursuant to this Agreement during the Final Design Phase, which delineates the specific duties of Taylor Studios in the Production Phase, as described below.

The term “Production” refers to the fabrication of exhibits.

The term “Interpretive Resources” refers to materials provided by Client to Taylor Studios in the Final Design Phase that include photographs, graphic images, and research text that facilitate creation of conceptual graphic layouts. These materials are necessary to help the designers develop the proper context for the exhibits.

The term “Change Order” refers to a written document to be signed by both parties reflecting changes to the Scope of Work, changes to the Contract Price or changes to any other term in this Agreement.

The terms “On-Site” or “Client’s Site” refers to the location where the installation of the finished exhibit will be installed by the Client.

The term “Basic Services” refers to those services rendered by Taylor Studios that are included in the contract price.

The term “Additional Services” refers to certain optional or additional services that are not included in the contract price and are subject to a Change Order at additional expense to Client.

The term “Reimbursement Expense” refers to expenses that may be incurred by Taylor Studios that are not included in the Contract Price and shall be reimbursed by Client to Taylor Studios.

The term “Contract Price” refers to the total cost of the Project as further defined in Article 4, Section B.

### **Scope of Work:**

The term “Project” refers to the Final Design and Production of a visitor experience focusing on the Opposites Attract and Protecting the Water exhibits, previously conceptualized under a separate Agreement, and as more specifically described in Attachment A and the design documents created pursuant to this Agreement.

The term “Scope of Work” refers to the specific duties of Taylor Studios to be performed pursuant to this Agreement, as defined herein, including the attachments and all written change orders entered into between the parties.

Taylor Studios will create designs in accordance with a document attached hereto and identified as “Attachment A”. Attachment shall consist of the preliminary and general specifications prepared by Client and provided to Taylor Studios, including a narrative description which will include Client’s general content and objectives. Attachment A shall include Client’s preliminary exhibit planning. Taylor Studios shall provide to Client and incorporate into Attachment A, its bid assumptions, project budget and a project schedule. For clarity, it is contemplated and desirable that Client’s preliminary specifications and the information provided by Taylor Studios be negotiated and incorporated into one document, referred to as Attachment A. The Client is solely responsible for the unloading, unpacking, installation, and final cleaning of all exhibits.

As the one design phase is performed as set forth below, Taylor Studios will create the Design Documents pursuant to Article 1, Sections A, which shall be signed by the parties and incorporated into Attachment A as an amendment.

### **INTERPRETIVE DESIGN AND PRODUCTION SERVICES**

I. ARTICLE 1: TAYLOR STUDIOS BASIC SERVICES for the Client will follow a well-tested and successful process divided into two phases of work: A) Final Design and D) Production.

A. Final Design Phase

The Designer's work in the Final Design Phase will be based on the Conceptual Exhibit Design drawings previously completed under a separate Agreement and the specific Production budget established in this Agreement. In the Final Design Phase the design is finalized and the Project's Production documents are completed including component schedules; the graphics/signage typicals; audiovisual treatments, and equipment selections; and exhibit component elevations, details, and finishes.

1. Writing

- a. Based on previously approved content outline and sample exhibit label text presented in the Conceptual Exhibit Design drawings previously completed under a separate Agreement, Taylor Studios will prepare a first draft of the exhibit label text for 90% of all interpretive panels and graphics for final authentication for accuracy of content. Labels will be written in a friendly, conversational style for easy, entertaining reading by a general audience.
- b. Taylor Studios will resubmit an edited second draft of the text for review and approval for accuracy and grammar. The second draft will correct any factual inaccuracies discovered in the authentication process.

2. Audiovisual Elements

Taylor Studios will develop the final concepts for audiovisual and AV-interactive elements that are part of the interpretive experience and work to integrate these elements into overall fabric of the site and other interpretive elements.

3. Graphic Design and Layout System

Taylor Studios will prepare and document a graphics design system that establishes the layout parameters for each typical sign and graphic element for the Client's approval. In the subsequent Production Phase, Taylor Studios will produce and provide final layouts and production ready design files for each of the individual graphic elements.

4. Final Design Budget

Taylor Studios will prepare a final line-item budget for all exhibit elements, the total of which will become the Production costs for the Project.

5. Requests for Information.

Taylor Studios maintains a written "Request for Information" system to transmit questions requesting answers among the members of the Project Team. These requests will be made either by fax or by email and timely response is required by Client in order to maintain the Project Schedule.

6. Final Design Documents

Taylor Studios will provide one (1) set of Final Design Documents in electronic PDF format, for review by the Client. Printed copies can be provided as a Reimbursable Expense.

7. Authorization to Proceed

Taylor Studios will not begin the next phase, Production Phase, until the Client has approved the Final Design Documents in writing and Client has authorized Taylor Studios to proceed based upon a mutually agreed upon budget and Scope of Work for the interpretive elements to be developed in the Production Phase. The Client will provide such authorization to proceed within ten (10) days of receipt of the Final Design Documents. In the event Client fails to respond to Taylor Studios within ten (10) days of receipt of the Final Design Documents, Client shall be in default. In this event, Taylor Studios will notify Client of its default and will inform Client that it is proceeding with the Production Phase based upon the Final Design Documents previously provided. If Client wishes to express any disapproval or suggest any changes to the Final Design Documents, it must do so in writing within five (5) days after receipt of the Notice of Default. If Client fails to respond within said five (5) additional days, any objections with the Final Design Documents will be deemed conclusively waived by Client and the Final Design Documents previously provided by Taylor Studios shall be conclusively presumed approved by Client. Any changes to the design after the expiration of the five (5) days will be pursuant to a Change Order at additional expense to Client.

In the event Client fails to respond to Taylor Studios' notice, Taylor Studios has the right to suspend all further performance under this Agreement until such time as a Change Order is entered in to resolving any and all issues, including but not limited to a modified Project Schedule.

8. Final Design Phase Trips

Zero (0) meetings/trips in the Final Design Phase are included in the Basic Services.

B. Production Phase

In the Production Phase, Taylor Studios will fabricate and ship the approved exhibit elements designed and documented in the Final Design Phase of the Project, and within the established Production budget set forth in this agreement. The Client is solely responsible for the unloading, unpacking, installation, and final cleaning of all exhibits.

1. Final Graphic Design and Copy Submittal

- a. Taylor Studios will prepare a final edit of the copy for final approval. The final edit will adjust the length of the text for final panel copy fitting.

- b. Taylor Studios will produce and provide final layouts and copy for each of the individual graphic elements for the Client's approval. This Final Graphic Design and Copy Submittal presents the last opportunity for any changes to the layout, images, and copy of the graphics.
    - c. Client requested changes to the layout, images, or copy of the graphics after Client approval of the Final Graphic Design and Copy Submittal will be considered Additional Services.
  2. Project Website  
Taylor Studios will create a Project Website for Client review of progress. Progress photos will be updated at least monthly. The Client will make every effort to review this website in a timely manner and will request any changes to fabrications within five (5) business days of a new website posting. Taylor Studios will notify the Project Team when Project Website updates are made.
  3. Minor Changes Not Affecting Contract Price  
Taylor Studios has authority to make minor changes in the Scope of Work not involving an adjustment of the Contract Price or the Project Schedule, if such changes are consistent with the intent of this Agreement and are reasonable or practical in the opinion of Taylor Studios. In this event, Taylor Studios will send to Client a Change Notice, so indicating any such change.

## II. ARTICLE 2: THE CLIENT'S RESPONSIBILITIES

### A. Client's Project Manager

The Client shall designate a Project Manager responsible for overall coordination of the Project.

1. This representative will be authorized to act on behalf of the Client and will have the authority to render decisions concerning design, process, and budgetary issues.
2. The Client's Project Manager will be responsible for coordination among all parties, including the Client, the Client's staff, and other Project consultants including, but not limited to, the Architect.
3. The Client's Project Manager will be responsible for maintaining the schedule and the adherence to the schedule by all parties.

### B. Administrative Assistance

The Client will provide assistance in calling meetings, scheduling reviews and presentations, and coordinating the work of the Client, the Client's Staff, and the Client's building and site contractors with the work of Taylor Studios.

### C. Decisions and Approvals



The Client, through the Project Manager, will make every effort to render decisions and approvals within two (2) business days, so as to avoid delay in the progress of Taylor Studios work. Absent notice of disapproval within such time, the authorization to proceed shall be deemed approved.

D. Access to Resources

The Client will provide Taylor Studios with reports from any existing and ongoing planning studies pertinent to the Project. The Client will provide any existing maps, site plans, drawings, or other relevant documents required by Taylor Studios for the successful performance of the work.

E. Review and Authentication

The Client will be responsible for review and authentication of any natural elements; custom created illustrations, maps, diagrams and painted murals. If Taylor Studios is required to provide an independent scholarly review or technical evaluation of any of these elements it will be considered Additional Services.

F. Notice of Revisions and Changes

The Client shall promptly inform Taylor Studios of any changes made, or planned to be made, in the character or design of the site or its structures that may affect the Taylor Studios' work. The Client's architect's drawings and other documents shall call attention to and clearly indicate these changes.

G. Image and Photo Acquisition

Client and Taylor Studios shall be responsible for securing usage rights and reproducible originals of images and photos identified by Taylor Studios for use in the exhibit. Client and Taylor Studios shall acquire rights to all images by the first two (2) weeks of the Production Phase. As an Additional Service, Taylor Studios can include photo acquisition within the Production budget.

H. Label Copy Style

Unless otherwise directed by Client, Taylor Studios will use the latest edition of the Chicago Manual of Style as the final authority on grammar and usage in exhibit label copy. The Copy that Taylor Studios submits to the Client for review shall conform to the guidelines therein, with exceptions made for readability or humor if necessary. The Client represents by final approval of copy that the Client considers the spelling, grammar, and usage to be correct. Any changes made after final approval will be pursuant to a Change Order.

I. Off-Budget Items

Design and/or coordination services relating to any off-budget items shall be considered Additional Services. Off-budget items include any elements of the exhibits and/or signage of which are not funded within the Client's maximum allowable Production budget, upon which Taylor Studios contracted fee is based. Such items may include, but are not limited

to, elements fabricated by the Client's forces under a separate budget and/or contributions by outside parties of equipment and/or services in kind.

J. Additional Services

The Project Team will discuss optional or Additional Services if the need arises during performance under this Agreement. Either party will inform the other party as to the reasons why the Additional Services are needed and a Change Order will reflect any such agreement reached.

K. Client-Caused Delays in Schedule

If Client causes excessive delays in the Project Schedule, a Change Order will be prepared and signed including possible modifications to the Project Schedule and additional fees may be charged. An "excessive delay" is defined as an act or omission by Client or Client's agent interfering with Taylor Studios' timely performance under this Agreement. Delays may include lack of timely approval on progress (e.g. approving copy, approving images, approving designs, etc.), providing information or usable photographs according to the schedule, site readiness delays, coordination of other contractors, etc. A delay caused by a contractor, subcontractor or other agent of Client shall be considered a delay by Client. Additional fees may be assessed based on additional Project management needed, rush charges including the cost of overtime or material rushes, exhibit storage fees, and other costs directly caused by the excessive delay. Taylor Studios will communicate in advance if delays appear to be imminent.

L. Delays for Causes Beyond the Control of Either Party.

In the event that there is a shortage of materials, inability to obtain materials, delivery problems, inclement weather, labor strikes, Acts of God or other causes beyond the control of either party, except as otherwise provided in subparagraph K above, the Project Schedule shall be modified, as is necessary, taking into consideration all relevant factors. The Project Team shall revise the Project Schedule to their mutual satisfaction without additional expense to either party, pursuant to a Change Order.

### III. ARTICLE 3: GENERAL CONDITIONS

A. Entire Agreement

This Agreement represents the entire agreement between the parties and takes precedent over any and all prior or simultaneous negotiations and agreements concerning the subject matter hereof whether written or oral. This Agreement may be amended only in writing signed by the parties hereto pursuant to a Change Order, as provided herein.

B. Change Orders

Change Orders shall be in writing and signed by both parties reflecting any modifications to the Agreement. Both parties shall receive copies of all Change Orders and the modifications stated therein shall modify the terms of this Agreement and are enforceable as if those terms were fully set forth in the original Agreement.



C. Ownership

All sketches, drawings, molds and prototypes prepared by Taylor Studios in connection with performance of its obligations under this Agreement shall remain the property of Taylor Studios and no use thereof shall be made by any person except upon written permission of Taylor Studios, except for the Client's self-promotion which will include the appropriate credit to Taylor Studios as the designer.

D. Written Notices

Any written notice sent to the other party pursuant to this Agreement, including but not limited to Notices of Default and of Termination, may be sent by certified mail, fax, or email, so long as there is a reasonable basis to verify that said notice was received by any member of the Client's Project Team or any other employee of either party. The effective date of any such notice shall be the date the notice was received. In the event of notice by email, the parties agree to reply upon receipt if requested, to confirm receipt. If any such notice is sent by certified mail, it shall be sent to the party's address as stated on page one (1), unless otherwise directed in writing by that party.

E. Work Performed By Others

Taylor Studios calculated the Scope of Work to be performed, the Progress Schedule and the pricing of services to be rendered upon the assumption that its employees and subcontractors will perform all of the work on its part to be performed concerning the Project. In the event that Client requires any portion of the work be performed by others, all costs associated with said work shall be deemed Additional Services and will be subject to a Change Order.

F. Tax Exempt Organizations

If Client is an entity which has qualified as a tax exempt organization under Federal law and has obtained from the legal division of the State within which it is located, a letter identifying the organization as being exempt from the imposition of sales and use taxes in that State, the Client may not be required to pay such taxes in any purchase under this contract. If Client is such an organization, the Client must provide to Taylor Studios a copy of the letter received by Client from the legal division of the State's Department of Revenue that identifies Client as being tax exempt and which assigns to Client an exemption number. Upon provision of that letter to Taylor Studios, Taylor Studios will refrain from collecting sales and use taxes from Client, as the law would otherwise require.

G. Mandatory Arbitration

The Client and Taylor Studios will attempt in good faith to resolve promptly through negotiation or mediation any claim or dispute arising out of, or relating to, this Agreement including, but not limited to, the Production of the Project or following the completion of the Project. If the dispute is not resolved through negotiation or mediation, the dispute shall be referred to a mutually agreed upon Arbitrator or a member of the American Arbitration Association located in Kansas. The arbitrator's decision shall be final, legally binding and judgment may be entered thereon. This agreement shall be governed, construed and interpreted in accordance with the laws of the State of Kansas.

H. Third Party Liability

The Client agrees to indemnify, defend and hold Taylor Studios harmless against any claims brought against it by others relating to the Agreement. "Claims" refers to any losses, actions, liabilities, damages, expenses and reasonable attorney's fees, court costs and similar claims.

G. Attorneys Fees

In the event either party is found to be in default or in breach of contract to the other party, by mediation, arbitration or in a court of law of competent jurisdiction, the non-defaulting party shall be entitled to and shall recover as damages from the defaulting party all reasonable expenses relating to the enforcement of this Agreement, including but not limited to its reasonable attorneys fees including all fees prior to the commencement of mediation or arbitration relating to the default. The attorney's fees recoverable shall include paralegal fees, court costs, expert's fees, deposition transcription fees, travel and hotel expenses and other reasonable and necessary legal and arbitration fees and expenses starting as of the date of default.

H. Default and Termination

A "default" refers to a failure by either party to perform one or more of the obligations imposed on it pursuant to this Agreement. If either party believes the other party is in default for any reason, a Default Notice shall be sent informing the other party of the factual basis which constitutes the default. Said notice shall provide the other party a reasonable period of time to cure the default, not to exceed ten (10) days, unless the parties agree in writing otherwise. The parties realize that time is of the essence concerning all aspects of this Agreement. If the defaulting party fails to cure the default within ten (10) days after the written notice, the non-defaulting party may elect to terminate this Agreement by sending the other party a Notice of Termination. If Client terminates for any reason, Taylor Studios shall be entitled to compensation equal to the reasonable value of the services it rendered and performed and the reasonable value of the materials provided up to the time of termination, including lost profit it reasonably likely would have earned pursuant to the contract up to the date of the termination.

I. Mutual Termination

This Agreement may be terminated by agreement at anytime pursuant to a Change Order. In the event both parties desire to terminate, the parties shall make every effort to agree to reasonable terms to compensate Taylor Studios for the work, services, and materials provided up to and including the date the Change Order is signed. Taylor Studios shall be entitled to compensation equal to the reasonable value of the services it rendered and performed and the reasonable value of the materials provided up to the time of termination, including lost profit it reasonably likely would have earned pursuant to the contract up to the date of the termination.

J. Certificate of Insurance

Taylor Studios shall file a Certificate of Insurance with the Client prior to commencement of work and will list the Client as additional insured. The Certificate of Insurance shall contain a provision that coverage afforded under the policies will not be canceled unless at least thirty (30) days prior written notice has been given to the Client. Certificate of Insurance will contain the following limits:

1. General Liability: \$1,000,000
2. Automobile Liability: \$1,000,000
3. Excess/Umbrella Liability: \$5,000,000
4. Workers Compensation and Employers' Liability: \$1,000,000
5. Design Consultant Professional Liability: \$1,000,000

K. Non-Discrimination Certification

Taylor Studios certifies that it is an equal opportunity employer and does not discriminate against employees or applicants for employment because of religion, race, color, national origin, age, sex, or disability, in accordance with the State and Federal laws.

L. Credit to Taylor Studios

Taylor Studios shall be entitled to credit for the design and Production of the exhibitions on documentary materials, promotional materials, internet postings, etc., pertaining to the Project. Taylor Studios shall be permitted to place a graphic element in an appropriate location within the completed exhibition that clearly credits Taylor Studios with the design of the exhibition.

IV. ARTICLE 4: PROJECT AND PAYMENT SCHEDULES

A. Project Schedule (SEE ATTACHED SCHEDULE)

|          |                                                                            |
|----------|----------------------------------------------------------------------------|
| 11/16/09 | Taylor Studios & Client will sign Contract                                 |
| 11/16/09 | Taylor Studios will begin Final Design Phase                               |
| DATE TBD | Taylor Studios & Client will have Kickoff Conference Call. Exact Date TBD. |
| DATE TBD | Client will provide Interpretive Resources to Taylor Studios               |
| 2/1/10   | Taylor Studios will provide Client Final Design Documents                  |
| 2/15/10  | Client will approve Final Design Documents                                 |
| 2/17/10  | Taylor Studios will begin Production Phase                                 |
| 2/24/10  | Client will provide Final Photos for Graphics                              |
| 3/23/10  | Taylor Studios will provide Client Final Graphic Design and Copy           |
| 3/30/10  | Client will approve Final Graphic Design and Copy                          |

|          |                                                                 |
|----------|-----------------------------------------------------------------|
| DATE TBD | Taylor Studios will be 50% complete with Production Phase       |
| DATE TBD | Taylor Studios will be 75% complete with Production Phase       |
| 5/18/10  | Taylor Studios will have Exhibits Packed and Ready for Shipment |
| 5/25/10  | Client receives Exhibits Ready for Installation                 |

**B. Contract Price and Payment Schedule**

The total price for all work contemplated by this agreement is \$66,000 ("Contract Price"). The Contract Price is composed of elements that will be separately billed and payable as follows:

1. The fee for Design is \$9,900. Payments will be made as follows:

| <b>Description:</b>                                | <b>Payment Percent:</b> | <b>Payment Amount:</b> | <b>Invoice Date:</b> |
|----------------------------------------------------|-------------------------|------------------------|----------------------|
| Down Payment for Credit Against Design Work        | 40%                     | \$3,960                | DATE TBD             |
| Monthly Progress Payment                           | 40%                     | \$3,960                | DATE TBD             |
| Final Payment Upon Client Approval of Final Design | 20%                     | \$1,980                | DATE TBD             |

2. The fee for Production is \$56,100. Payments will be made as follows:

| <b>Description:</b>                                                                     | <b>Payment Percent:</b> | <b>Payment Amount:</b> | <b>Invoice Date:</b> |
|-----------------------------------------------------------------------------------------|-------------------------|------------------------|----------------------|
| Down Payment – Production Begins                                                        | 30%                     | \$16,830               | DATE TBD             |
| Progress Payment – 50% Complete with Production                                         | 30%                     | \$16,830               | DATE TBD             |
| Progress Payment – 75% Complete with Production                                         | 15%                     | \$8,415                | DATE TBD             |
| Progress Payment – Exhibits Packed & Ready for Shipment. Payment Due Prior to Shipping. | 15%                     | \$8,415                | DATE TBD             |
| Final Payment – Client receives Exhibits Ready for Installation & Final Client Approval | 10%                     | \$5,610                | DATE TBD             |

3. The parties agree that all payments due under any invoice will be paid within thirty (30) days of receipt by Client and that any amount unpaid thereafter shall then begin to

accrue interest at the rate of eighteen percent (18%) per annum on any amount outstanding and unpaid beyond that date.

**SIGNATURES TO THE AGREEMENT:**

The parties have signed this Agreement as their free and voluntary act on the date set forth next to their names below. Each party represents to the other that they have authority to enter into this Agreement, that each person signing below fully understands the meaning of the provisions contained herein, and each agrees to comply with its terms to the best of their ability.

TAYLOR STUDIOS, INC

   
By: Betty Brennan, President Date

City of Wichita, KS

\_\_\_\_\_  
By: Carl Brewer – Mayor, City of Witchita Date



## Wichita WATER Center

| Activity Name                                                                  | Start Date | Finish Date | Duration (Days) | 20092010 |     |     |     |     |     |     |     |     |     |     |  |
|--------------------------------------------------------------------------------|------------|-------------|-----------------|----------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|--|
|                                                                                |            |             |                 | Oct      | Nov | Dec | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug |  |
| 1Wichita WATER Center                                                          | 11/16/09   | 5/25/10     | 137             |          |     |     |     |     |     |     |     |     |     |     |  |
| 2Contract Awarded & Signed                                                     | 11/16/09   | 11/16/09    | 0               |          |     |     |     |     |     |     |     |     |     |     |  |
| 3Design Phase                                                                  | 11/16/09   | 2/15/10     | 66              |          |     |     |     |     |     |     |     |     |     |     |  |
| 4Final Design Phase                                                            | 11/16/09   | 2/15/10     | 66              |          |     |     |     |     |     |     |     |     |     |     |  |
| 5Orientation to the Project                                                    | 11/16/09   | 11/20/09    | 5               |          |     |     |     |     |     |     |     |     |     |     |  |
| 6Final Design Conference Call (Date TBD)                                       | 11/20/09   | 11/20/09    | 0               |          |     |     |     |     |     |     |     |     |     |     |  |
| 7Create Final Design Drawings                                                  | 11/23/09   | 1/15/10     | 40              |          |     |     |     |     |     |     |     |     |     |     |  |
| 8Develop 50% Final Design Budget (Internal Only)                               | 12/7/09    | 12/11/09    | 5               |          |     |     |     |     |     |     |     |     |     |     |  |
| 9Compose Final Exhibit Narrative                                               | 11/23/09   | 1/15/10     | 40              |          |     |     |     |     |     |     |     |     |     |     |  |
| 10Compile Exhibit & Graphic Component Schedules                                | 11/23/09   | 1/15/10     | 40              |          |     |     |     |     |     |     |     |     |     |     |  |
| 11Compose Draft Copy                                                           | 11/23/09   | 1/15/10     | 40              |          |     |     |     |     |     |     |     |     |     |     |  |
| 12Establish Graphic Panels (Quantity, Size, Content, Photo, Production Method) | 11/23/09   | 1/15/10     | 40              |          |     |     |     |     |     |     |     |     |     |     |  |
| 13Finalize Floor Plan                                                          | 11/23/09   | 1/15/10     | 40              |          |     |     |     |     |     |     |     |     |     |     |  |
| 14Develop 100% Final Design Budget                                             | 1/18/10    | 1/22/10     | 5               |          |     |     |     |     |     |     |     |     |     |     |  |
| 15Final Design Deliverables Internal Review                                    | 1/25/10    | 1/29/10     | 5               |          |     |     |     |     |     |     |     |     |     |     |  |
| 16Final Design Deliverables Due to Client                                      | 2/1/10     | 2/1/10      | 0               |          |     |     |     |     |     |     |     |     |     |     |  |
| 17Phase End Conference Call Presentation                                       | 2/1/10     | 2/1/10      | 0               |          |     |     |     |     |     |     |     |     |     |     |  |
| 18Client Review of Final Design Phase Deliverables                             | 2/2/10     | 2/15/10     | 10              |          |     |     |     |     |     |     |     |     |     |     |  |
| 19Client Approval of Final Design Phase Deliverables                           | 2/15/10    | 2/15/10     | 0               |          |     |     |     |     |     |     |     |     |     |     |  |

## Wichita WATER Center

|    | Activity Name                           | Start Date | Finish Date | Duration (Days) |      |     |     |     |      |     |     |     |     |     |     |  |
|----|-----------------------------------------|------------|-------------|-----------------|------|-----|-----|-----|------|-----|-----|-----|-----|-----|-----|--|
|    |                                         |            |             |                 | 2009 |     |     |     | 2010 |     |     |     |     |     |     |  |
|    |                                         |            |             |                 | Oct  | Nov | Dec | Jan | Feb  | Mar | Apr | May | Jun | Jul | Aug |  |
| 20 | Production Phase                        | 2/17/10    | 5/25/10     | 70              |      |     |     |     |      |     |     |     |     |     |     |  |
| 21 | Graphic Production                      | 2/17/10    | 5/4/10      | 55              |      |     |     |     |      |     |     |     |     |     |     |  |
| 22 | Copy                                    | 2/17/10    | 3/16/10     | 20              |      |     |     |     |      |     |     |     |     |     |     |  |
| 23 | Edit Draft Copy                         | 2/17/10    | 3/2/10      | 10              |      |     |     |     |      |     |     |     |     |     |     |  |
| 24 | Draft Copy Due to Client                | 3/2/10     | 3/2/10      | 0               |      |     |     |     |      |     |     |     |     |     |     |  |
| 25 | Client Review of Draft Copy             | 3/3/10     | 3/9/10      | 5               |      |     |     |     |      |     |     |     |     |     |     |  |
| 26 | Client Approval of Draft Copy           | 3/9/10     | 3/9/10      | 0               |      |     |     |     |      |     |     |     |     |     |     |  |
| 27 | Edit Final Copy                         | 3/10/10    | 3/16/10     | 5               |      |     |     |     |      |     |     |     |     |     |     |  |
| 28 | Graphics                                | 2/17/10    | 5/4/10      | 55              |      |     |     |     |      |     |     |     |     |     |     |  |
| 29 | Create Final Graphic Design             | 2/17/10    | 3/16/10     | 20              |      |     |     |     |      |     |     |     |     |     |     |  |
| 30 | Client Provides Final Graphic Resources | 2/24/10    | 2/24/10     | 0               |      |     |     |     |      |     |     |     |     |     |     |  |
| 31 | Final Graphic Design Internal Review    | 3/17/10    | 3/23/10     | 5               |      |     |     |     |      |     |     |     |     |     |     |  |
| 32 | Final Graphic Design Due to Client      | 3/23/10    | 3/23/10     | 0               |      |     |     |     |      |     |     |     |     |     |     |  |
| 33 | Client Review of Final Graphic Design   | 3/24/10    | 3/30/10     | 5               |      |     |     |     |      |     |     |     |     |     |     |  |
| 34 | Client Approval of Final Graphic Design | 3/30/10    | 3/30/10     | 0               |      |     |     |     |      |     |     |     |     |     |     |  |
| 35 | Create Production Ready Art             | 3/31/10    | 4/6/10      | 5               |      |     |     |     |      |     |     |     |     |     |     |  |
| 36 | Production Ready Art Due to Client      | 4/6/10     | 4/6/10      | 0               |      |     |     |     |      |     |     |     |     |     |     |  |
| 37 | Client Review of Production Ready Art   | 4/7/10     | 4/13/10     | 5               |      |     |     |     |      |     |     |     |     |     |     |  |
| 38 | Client Approval of Production Ready Art | 4/13/10    | 4/13/10     | 0               |      |     |     |     |      |     |     |     |     |     |     |  |
| 39 | Graphic Production                      | 4/14/10    | 5/4/10      | 15              |      |     |     |     |      |     |     |     |     |     |     |  |

## Wichita WATER Center

|    | Activity Name                                    | Start Date | Finish Date | Duration (Days) |      |     |     |      |     |     |     |     |     |     |     |  |
|----|--------------------------------------------------|------------|-------------|-----------------|------|-----|-----|------|-----|-----|-----|-----|-----|-----|-----|--|
|    |                                                  |            |             |                 | 2009 |     |     | 2010 |     |     |     |     |     |     |     |  |
|    |                                                  |            |             |                 | Oct  | Nov | Dec | Jan  | Feb | Mar | Apr | May | Jun | Jul | Aug |  |
| 40 | Exhibit Production                               | 2/17/10    | 5/18/10     | 65              |      |     |     |      |     |     |     |     |     |     |     |  |
| 41 | Create & Submit Shop Drawings & Material Samples | 2/17/10    | 2/23/10     | 5               |      |     |     |      |     |     |     |     |     |     |     |  |
| 42 | Client Review of Shop Drawings & Samples         | 2/24/10    | 3/2/10      | 5               |      |     |     |      |     |     |     |     |     |     |     |  |
| 43 | Client Approval of Shop Drawings & Samples       | 3/2/10     | 3/2/10      | 0               |      |     |     |      |     |     |     |     |     |     |     |  |
| 44 | Fabricate Exhibits                               | 3/3/10     | 5/18/10     | 55              |      |     |     |      |     |     |     |     |     |     |     |  |
| 45 | Final In-Shop Client Review & Inspection         | 5/18/10    | 5/18/10     | 0               |      |     |     |      |     |     |     |     |     |     |     |  |
| 46 | Exhibits are Ready to Ship                       | 5/18/10    | 5/18/10     | 0               |      |     |     |      |     |     |     |     |     |     |     |  |
| 47 | Setup & Installation                             | 5/18/10    | 5/25/10     | 5               |      |     |     |      |     |     |     |     |     |     |     |  |
| 48 | Shipping & Handling                              | 5/18/10    | 5/25/10     | 5               |      |     |     |      |     |     |     |     |     |     |     |  |
| 49 | Project Closeout                                 | 3/3/10     | 5/25/10     | 60              |      |     |     |      |     |     |     |     |     |     |     |  |
| 50 | Create Maintenance Manual                        | 3/3/10     | 5/25/10     | 60              |      |     |     |      |     |     |     |     |     |     |     |  |
| 51 | Project Complete                                 | 5/25/10    | 5/25/10     | 0               |      |     |     |      |     |     |     |     |     |     |     |  |
|    |                                                  |            |             |                 | Oct  | Nov | Dec | Jan  | Feb | Mar | Apr | May | Jun | Jul | Aug |  |



City of Wichita  
City Council Meeting  
November 17, 2009

**TO:** Mayor and City Council

**SUBJECT:** Supplemental Agreement No. 1 for the inspection of Special Transportation Structures (All Districts)

**INITIATED BY:** Department of Public Works

**AGENDA:** Consent

---

**Recommendation:** Approve Supplemental Agreement No. 1.

**Background:** In accordance with requirements of the Federal Highway Administration (FHWA), the City engages the services of a qualified structural engineer to assess the condition of vehicular bridges, once every two years. However, as structures spanning less than twenty feet do not qualify for federal funding, such structures historically have not been inspected with the regular, biennial inspections. To ensure the safety of these special transportation structures, Public Works engaged the services of Professional Engineering Consultant's, P.A. (PEC). The controlling agreement provided for the inspection of fifty-nine structures, for a lump sum fee of \$24,452, and was approved by the City Manager on June 22, 2009.

**Analysis:** During the course of the project, four additional structures (or a total of sixty-three special transportation structures) were identified as requiring inspection. Per the terms of its proposal, PEC has agreed to perform additional inspections at a fixed cost of \$410 per structure. Inspection of the additional structures will ensure that their current condition is appropriately assessed, and any associated structural deficiencies are properly identified.

**Financial Considerations:** Payment to PEC for the additional inspection will be on a lump sum basis of \$1,640. Funding is available in the 2009 Contract Maintenance Program.

**Goal Impact:** By ensuring the structural sufficiency of these special transportation structures (bridges spanning less than twenty feet), this work will support the City's goal to Ensure Efficient Infrastructure.

**Legal Considerations:** The Supplemental Agreement No. 1 has been approved as to form by the Law Department.

**Recommendations/Actions:** It is recommended that the City Council approve Supplemental Agreement No. 1 and authorize the necessary signatures.

**Attachments:** Supplemental Agreement No 1.

SUPPLEMENTAL AGREEMENT NO. 1  
to the  
AGREEMENT FOR PROFESSIONAL SERVICES DATED JUNE 22, 2009  
between  
THE CITY OF WICHITA, KANSAS  
Party of the First Part, hereinafter called the  
"CITY"  
and  
PROFESSIONAL ENGINEERING CONSULTANTS, P.A.  
Party of the Second Part, hereinafter called the  
"CONSULTANT"

WITNESSETH:

WHEREAS, there now exists a contract between the two parties covering professional services to be provided by the CONSULTANT for the inspection of fifty-nine (59) special transportation structures, called the AGREEMENT, and

WHEREAS, Paragraph IV.B. of the AGREEMENT provides that additional work be performed and additional compensation be paid on the basis of a Supplemental Agreement duly entered into by the parties, and

WHEREAS, it is the desire of both parties that the CONSULTANT provide inspection services for four (4) additional structures.

NOW THEREFORE, the parties hereto mutually agree as follows:

1. ARTICLE 1 of AGREEMENT, SCOPE OF SERVICES-revise to read:

"... and to furnish professional services as required to inspect four (4) additional structures, as outlined in Exhibit A2, Scope of Services."

2. ARTICLE IV OF AGREEMENT, PAYMENT PROVISIONS-add to paragraph A:

Payment to the CONSULTANT for the performance of professional services required by this Supplemental Agreement No. 1 shall be on the basis separate, not-to-exceed fees, based on the CONSULTANT'S actual costs and may be less than the estimated amount.

Payments to the CONSULTANT for the provision of services associated with this Supplemental Agreement No. 1 shall be in accordance with Section IV.A of the AGREEMENT. Payments shall be based on the actual units of work performed, such that the total payment shall not exceed the sum of \$1,640.00.

3. Except as noted herein, all terms and conditions set forth in the original AGREEMENT shall remain in force and effect.

IN WITNESS WHEREOF, the CITY and the CONSULTANT have executed this Supplemental Agreement as of this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

BY ACTION OF THE CITY COUNCIL

\_\_\_\_\_  
Carl Brewer, Mayor

SEAL:

ATTEST

---

Karen Sublett, City Clerk

APPROVED AS TO FROM:

---

Gary Rebenstorf, Director of Law

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

---

(Name & Title)

ATTEST:

SCOPE OF SERVICES

**SPECIAL TRANSPORTATION STRUCTURES**

(Project No. 132722; Supplemental Agreement No. 1)

1. Obtain list/map of four (4) additional structures to be inspected.
2. Generate field inspection data form and unique structure identification numbers.
3. Invite the CITY to view field inspections.
4. Acquire existing plan details.
5. Review preliminary report with the CITY.
6. Provide completed inspection reports to the CITY.
7. Provide master list to the CITY.
8. Provide prioritized list of maintenance needs and/or replacement recommendations.
9. Provide master map in GIS format for inspected structures.

City of Wichita  
City Council Meeting  
November 17, 2009

**TO:** Mayor and City Council

**SUBJECT:** Water Treatment Plant Residuals Project, Pipeline B - Change Order

**INITIATED BY:** Wichita Water Utilities

**AGENDA:** Consent

---

**Recommendation:** Approve Change Order No. 3 with Dondlinger & Sons Construction Co., Inc. for additional work on the Water Treatment Plant Residuals Project.

**Background:** On February 10, 2009, the City Council approved a Contract with Dondlinger & Sons Construction Co., Inc. to construct pipelines A and B for the Water Treatment Plant Residuals Project. Pipeline B will extend the 16-inch residuals pipeline from the floodway crossing to the City's lagoons.

**Analysis:** The Water Treatment Plant uses lime as a softening agent and ferric sulphate as a coagulant in its water treatment processes. These chemicals bind to the sediments and impurities in the water, causing them to become heavier and allowing them to settle and then be removed. The residuals that settle out are pumped out of the basins to either the Residuals Handling Facility, or recycled to the head of the plant where the chemical residual continues to provide treatment.

Plans for the new pipeline and existing infrastructure were reviewed by staff and appeared to be correct. When construction began, however, the actual thickness of West Street was found to be 2-inches thicker than shown on the plans and bid documents. This resulted in a significant increase in quantities of pavement removal and replacement.

Water Utilities also has two separate lime removal Contracts for the residuals in the lagoons, one wet and one dry. Both operations would have been negatively affected by the original location of the outfall structure for pipeline B. To accommodate future and continued removal of lime, the outfall structure was extended by 250 feet.

**Financial Consideration:** The original Contract for pipeline B was \$742,425. Change Order No. 3 will increase the Contract by \$53,876 or 7 percent for a total of \$796,301. Funds are available in CIP W-014, Water Treatment Plant Residuals Improvements, and will be provided by Water Utility revenues and reserves, and/or a future revenue bond issue. Change Order Nos. 1 and 2 were part of pipeline A.

**Goal Impact:** The Change Order will ensure efficient infrastructure by providing reliable, compliant and secure utilities.

**Legal Considerations:** The Change Order has been approved as to form by the Law Department.

**Recommendations/Actions:** It is recommended that the City Council approve the Change Order and authorize the necessary signatures.

**Attachments:** Change Order No. 3 with Dondlinger & Sons Construction Co., Inc.

# MKEC ENGINEERING CONSULTANTS, INC.

Kansas City Oklahoma City Wichita

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## MEMORANDUM

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**To:** Deb Ary  
Cc: Marty Dondlinger

**Date:** 10/21/2009

**From:** Adam Koster

**Reference:** COW WTP Residuals Disposal – Pipeline B  
West Street Pavement Change Order

**Proj. No.:** 08116

---

The west half of West Street was removed and replaced as a part of the above referenced project. The original plans were based on West Street being a standard City of Wichita arterial having 7" of asphaltic concrete (AC) pavement on 8" of reinforced crushed rock base. While removing pavement in preparation for the installation of Pipeline B, Dondlinger discovered that West Street was constructed with 12" AC pavement on treated subgrade.

MKEC consulted Anthony DeCicco with the City of Wichita to determine the preferred pavement replacement alternatives. The replacement options included 12" AC pavement on treated subgrade or 10" AC pavement on 8" reinforced crushed rock base. MKEC selected the 10" AC pavement on 8" of reinforced crushed rock base because of its superior quality and lower total cost.

The following items are included in the change order by Dondlinger (see attachment):

| <u>ITEM</u>                                            | <u>COST</u>        |
|--------------------------------------------------------|--------------------|
| Additional excavation and pavement removal             | \$10,658.00        |
| Additional 3" AC pavement                              | \$39,785.00        |
| Glass grid for crack repair under the mill and overlay | <u>\$ 1,012.50</u> |
| SubTotal                                               | \$51,455.50        |
| Overhead and Profit (10%)                              | <u>\$ 5,145.55</u> |
| TOTAL                                                  | \$56,601.05        |

*Providing Professional Service Since 1982*

411 NORTH WEBB ROAD WICHITA, KS 67206 T 316.684.9600 F 316.684.5100



In addition to the work referenced above, 78 SY additional 2" Mill & Overlay was required at the northern end of the West Street road repair. This work was required due to scaling of the existing asphalt near the edge of the improved area. This additional work will be paid for by an overrun of the original bid quantity.

Cost control for the additional work items is provided by the unit prices in the original bid. Experience indicates that overhead and profit during the competitive bid process typically ranges from 3-5%. MKEC is offering to pay for 7% (\$3,601.88) of the overhead and profit that the contractor is charging the project due to the increased pavement thickness. This reduces Dondlinger's total West Street Change Order Request to \$53,876.67.

At the request of the City, Pipeline B is being extended an additional 250 L.F.; moving the discharge/ (Splitter Box) location from the northeast corner to the northwest corner of the South Lagoon. This change will accommodate Ag Service, who currently dredges the lime out of the lagoon. This change reduces the impact of this project on their dredging operation. A copy of Dondlinger's Change Order Request for the Revised Splitter Box Location is attached.

Please review and approve Change Order No. 3 for Pipelines A & B as attached. If you have any questions, please let me know.

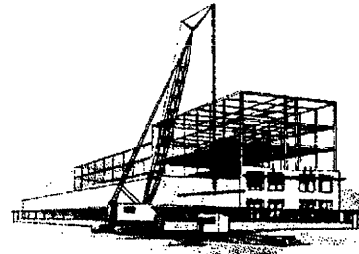
AJK

# DONDLINGER & SONS CONSTRUCTION CO., INC.

## General Contractors

TOM DONDLINGER  
NICK DONDLINGER  
MARTIN DONDLINGER JR.

FOUNDED IN 1898 BY N. L. DONDLINGER



P.O. BOX 398 WICHITA, KANSAS 67201-0398  
PHONE (316) 945-0555  
FACSIMILE (316) 945-9009  
www.dondlinger.biz

September 30, 2009

Mr. Bryce Winter, Ph.D., P.G.  
MKEC Engineering Consultants, Inc.  
411 N. Webb Road  
Wichita, Kansas 67206

Re: West Street Pavement Change Order Request  
Water Plant Residuals Disposal Line B  
Wichita, Kansas

Dear Bryce:

We are requesting a change order in the amount of \$53,876.67 to cover our costs for the additional pavement work on West Street per the following breakdown.

| Description                         | Qty  | UM         | Unit Price | Extension    |                            |
|-------------------------------------|------|------------|------------|--------------|----------------------------|
| ADD'L 3" ASPHALT                    | 3650 | SY         | \$ 10.90   | \$ 39,785.00 | Lafarge Quote Attached     |
| REINF. CONC. ROCK BASE 8"           | 4210 | SY         | *****      | *****        | Orig. Bid Item (no change) |
| 2" MILL & OVERLAY                   | 3650 | SY         | *****      | *****        | Orig. Bid Item (no change) |
| GLASS GRID FOR CRACKS               | 135  | LF         | \$ 7.50    | \$ 1,012.50  | Lafarge Quote Attached     |
| ADD'L EXCAVATION & PAVT. REM.       | 3650 | SY         | \$ 2.92    | \$ 10,658.00 | D & S Extra Work           |
|                                     |      |            |            | *****        |                            |
|                                     |      | Sub-total: |            | \$ 51,455.50 |                            |
| Overhead & Profit                   |      |            | 10%        | \$ 5,145.55  |                            |
|                                     |      | Sub-total: |            | \$ 56,601.05 |                            |
| ADD'L 2" MILL & OVERLAY (26' x 27') | 78   | SY         | \$ 11.25   | \$ 877.50    |                            |
|                                     |      |            |            | \$ 57,478.55 |                            |
| LESS AMOUNT TO BE PAID BY MKEC      |      |            |            | \$ 3,601.88  |                            |
|                                     |      | Total:     |            | \$ 53,876.67 |                            |

If you have any questions or need further information please let me know.

Sincerely,  
DONDLINGER & SONS CONSTRUCTION CO., INC.

*Martin Dondlinger Jr.*  
Martin Dondlinger, Jr.  
Vice President

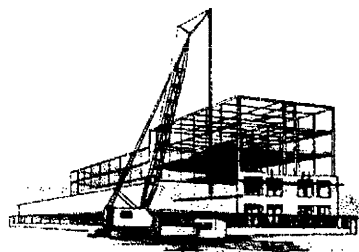


# DONDLINGER & SONS CONSTRUCTION CO., INC.

## General Contractors

TOM DONDLINGER  
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FOUNDED IN 1898 BY N. L. DONDLINGER



P.O. BOX 398 WICHITA, KANSAS 67201-0398  
PHONE (316) 945-0555  
FACSIMILE (316) 945-9009  
www.dondlinger.biz

October 20, 2009

Mr. Bryce Winter Ph.D., P.G.  
MKEC Engineering Consultants, Inc.  
411 N. Webb Road  
Wichita, Kansas 67206

Re: Revised Splitter Box Location – Pipeline B  
Wichita, Kansas

Dear Bryce:

We are requesting a change order in the amount of \$1,523.40 to cover our costs associated with the revised location of the splitter box. Please refer to the following breakdown of items and costs associated with this request.

| Existing Bid Items                 | Qty   | UM         | Bid Price | Extension     |
|------------------------------------|-------|------------|-----------|---------------|
| 16" Pipe                           | 250   | LF         | \$ 33.00  | \$ 8,250.00   |
| 24" Pipe                           | -50   | LF         | \$ 85.00  | \$ (4,250.00) |
| Excavation                         | -1040 | CY         | \$ 4.00   | \$ (4,160.00) |
| Compacted Fill                     | -830  | CY         | \$ 3.00   | \$ (2,490.00) |
|                                    |       | Sub-total: |           | \$ (2,650.00) |
| Additional Items and Adjustments   |       |            |           |               |
| Price Increase on 16" Pipe         | 250   | LF         | \$ 8.70   | \$ 2,175.00   |
| 24" Stub                           | 1     | EA         | \$ 425.00 | \$ 425.00     |
| 16" MJ 11.25" Bend w/ mega-lugs    | 1     | EA         | \$ 698.00 | \$ 698.00     |
| 16" MJ x PE 22.5" Bend w/ mega-lug | 1     | EA         | \$ 496.00 | \$ 496.00     |
|                                    |       |            |           | \$ 3,794.00   |
| Overhead & Profit                  |       |            | 10%       | \$ 379.40     |
|                                    |       | Sub-total: |           | \$ 4,173.40   |
|                                    |       | Total:     |           | \$ 1,523.40   |

If you have any questions or need further information please let me know.

Sincerely,  
DONDLINGER & SONS CONSTRUCTION CO., INC.

Martin Dondlinger, Jr.  
Vice President

## CONTRACT CHANGE ORDER

|                                                                                     |                               |                                   |
|-------------------------------------------------------------------------------------|-------------------------------|-----------------------------------|
| <b>INSTITUTION</b><br>City of Wichita, Kansas                                       | <b>LOCATION</b><br>Pipeline B | <b>DATE:</b><br>October 21, 2009  |
| <b>PROJECT TITLE</b><br>Water Plant Residuals Disposal Improvements: Pipeline A & B |                               | <b>CHANGE ORDER NO.</b><br>3      |
| <b>CONTRACT WORK</b><br>Installation of 16" Lime Slurry Line                        |                               | <b>PAGE NO.</b><br>               |
|                                                                                     |                               | <b>NET AMOUNT OF CHANGE ORDER</b> |
|                                                                                     |                               | <b>ADD \$</b> 55,400.07           |
|                                                                                     |                               | <b>DEDUCT \$</b> 0                |

| DESCRIPTION OF WORK, STATEMENT OF NECESSITY AND SOURCE OF REQUEST                                      | AMOUNT                                                                                                                       |
|--------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|
| At the request of Dondlinger & Sons Construction Co., Inc., the following changes have been requested: |                                                                                                                              |
| 1. West Street Pavement                                                                                | Additional excavation & pavement removal<br>Additional 3" asphalt, glass grid<br>Additional 2" mill & overlay<br>\$53,876.67 |
| 2. Relocation of splitter box                                                                          | Additional 16" PVC & fitting<br>Deduct 24" PVC<br>Deduct fill & excavation<br>\$ 1,523.40                                    |
| 3.                                                                                                     |                                                                                                                              |
| 4.                                                                                                     |                                                                                                                              |
| 5.                                                                                                     |                                                                                                                              |
| 6.                                                                                                     |                                                                                                                              |
| <b>TOTAL CHANGE ORDER REQUEST</b>                                                                      |                                                                                                                              |
| <b>\$55,400.07</b>                                                                                     |                                                                                                                              |

|                                                                               |               |
|-------------------------------------------------------------------------------|---------------|
| The Original Contract Sum was.....                                            | \$ 742,425.00 |
| Net Change by Previous Change Orders .....                                    | \$ 0          |
| The Contract Sum prior to this Change Order was.....                          | \$ 742,425.00 |
| The Contract Sum will be increased by the Change Order .....                  | \$ 55,400.07  |
| Net New Contract Sum including this Change Order will be.....                 | \$ 797,825.07 |
| The Contract Time will be (increased/decreased) by .....                      | ---           |
| The Date of Completion as of the Date of this Change Order therefore is ..... | ---           |

| REQUEST INFORMATION NECESSARY BEFORE APPROVAL                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | APPROVALS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>This request was initiated by <input type="checkbox"/> Arch/Eng. <input checked="" type="checkbox"/> Agency <input checked="" type="checkbox"/> Contr.</li> <li>Is this request necessitated by design error or omission? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></li> <li>Is this request a result of change in program? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></li> <li>Is this request a result of field conditions? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></li> <li>If none of above, state reason:</li> </ul> | <div style="border-bottom: 1px solid black; padding-bottom: 5px;"> <div style="display: flex; justify-content: space-between;"> <div><i>Adam Kester</i></div> <div>10/21/09</div> </div> <div style="display: flex; justify-content: space-between; font-size: small;"> <div>Project Engineer</div> <div>Date</div> </div> </div> <div style="border-bottom: 1px solid black; padding-bottom: 5px; margin-top: 10px;"> <div style="display: flex; justify-content: space-between;"> <div>City of Wichita</div> <div>Date</div> </div> </div> |

### CONTRACTOR'S ACCEPTANCE

|                                          |                        |
|------------------------------------------|------------------------|
| Dondlinger & Sons Construction Co., Inc. |                        |
| Contractor's Name                        |                        |
| PO Box 398                               | Wichita, KS 67201-0398 |
| Contractor's Address                     |                        |
| By: <i>Martin Dondlinger</i>             | Date: 10-21-09         |

**CITY OF WICHITA**  
**City Council Meeting**  
November 17, 2009

**TO:** Mayor and City Council Members

**SUBJECT:** Partial Acquisition of land in the Southwest Quarter of the Northeast Quarter of Section 17, Township 25 South, Range 1 West of the 6<sup>th</sup> Principal Meridian for the Integrated Local Water Supply Plan (Harvey County)

**INITIATED BY:** Office of Property Management

**AGENDA:** Consent

---

**Recommendation:** Approve the acquisition.

**Background:** On August 3, 1993, City Council approved the Water Supply Plan prepared by Burns & McDonnell/MKEC Engineering Consultants. The Plan identified cost-effective water resource projects to meet the City's future water needs. On October 10, 2000, City Council approved the projects and implementation of the plan. One portion of the Water Supply Plan is the groundwater recharge project. The groundwater recharge includes the capture of above base flow water (water which is generated from rainfall runoff above the base river flow) in the Little Arkansas River to be transferred to and stored in the aquifer. The recovery and use of this water will meet future demands for the City of Wichita. Certain sites have been identified as necessary for the capture of above base flow water, locations for water treatment facilities, recharge/recovery wells, and recharge basins. The agricultural tract at the Southwest corner of the Northeast Quarter of Section 17, Township 25 South, and Range 1 West of the 6<sup>th</sup> P.M. is required for a pipeline easement and temporary easement during construction.

**Analysis:** The City requires a 0.15 acre pipeline easement across the most southwestern corner of the subject property together with a temporary construction easement consisting of .01 acres. The property is zoned and utilized for agricultural use. There are no improvements impacted by the project. Using a market analysis the easements were valued at \$135 or \$900 an acre for pipeline and \$4, or \$360 an acre for temporary construction easements. The seller has agreed to accept the established minimum offer of \$500 for the proposed acquisition.

**Financial Considerations:** A budget of \$1,000 is requested. The budget request includes \$500 for the acquisition, \$500 for title work, title insurance, closing costs, recording fees and administrative fees. Funding for this project is included in the Capital Improvement Plan (CIP) in W-549, Water Supply Plan Phase III, which has an available funding of over \$7.6 million.

**Goal Impact:** The acquisition of this parcel is necessary to ensure efficient infrastructure.

**Legal Considerations:** The Law Department has approved the contract and easement as to form.

**Recommendation/Action:** It is recommended that the City Council approve the agreement and authorize the necessary signatures.

**Attachments:** Real estate purchase agreement, tract map and aerial.

## EASEMENT PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2009 by and between David H. Neises and Marlene H. Neises, husband and wife, party of the First Part, hereinafter referred to as "Seller," whether one or more, and City of Wichita, KS, a Municipal Corporation, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

Permanent Easement (Pipeline – Parcel "A") A 60.5 feet wide strip of land lying on the left side (Northeasterly side) of a line described as: Commencing at the northwest corner of the Northeast Quarter of Section 17, Township 25 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas; thence on an assumed bearing of S00°47'42"E, 2622.57 feet along the west line of said Northeast Quarter to the Point of Beginning; thence S45°13'29"E, 45.96 feet to the Point of Termination, said point being on the south line of said Northeast Quarter. Said tract contains 6444 sq. ft. (0.15 acres), more or less.

The above easement adjoins the southwesterly side of an easement as described in Condemnation Case NO. 104,110 and recorded in Miscellaneous Book 150, Page 1.

The sidelines of the above described strip of land are to be shortened or lengthened to form continuous lines and to terminate on the west line of said Northeast Quarter and on the south line of said Northeast Quarter.

Temporary Easement (Construction – Parcel "B") All that part of the Northeast Quarter of Section 17, Township 25 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas; thence on an assumed bearing of S00°47'42"E, 2622.57 feet along the west line of said Quarter to the Point of Beginning; Thence S45°13'29"E, 45.96 feet to the Point of Termination, said point being the south line of said Northeast Quarter. Said tract contains 528 sq. ft. (0.01 acres), more or less.

1. The Seller does hereby agree to sell and convey to the Buyer by a good and sufficient Permanent Easement and/or Temporary Construction Easement of the following described real property, situated in Sedgwick County, Kansas, to wit:

Permanent Easement (Pipeline – Parcel "A") A 60.5 feet wide strip of land lying on the left side (Northeasterly side) of a line described as: Commencing at the northwest corner of the Northeast Quarter of Section 17, Township 25 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas; thence on an assumed bearing of S00°47'42"E, 2622.57 feet along the west line of said Northeast Quarter to the Point of Beginning; thence S45°13'29"E, 45.96 feet to the Point of Termination, said point being on the south line of said Northeast Quarter. Said tract contains 6444 sq. ft. (0.15 acres), more or less.

The above easement adjoins the southwesterly side of an easement as described in Condemnation Case NO. 104,110 and recorded in Miscellaneous Book 150, Page 1.

The sidelines of the above described strip of land are to be shortened or lengthened to form

continuous lines and to terminate on the west line of said Northeast Quarter and on the south line of said Northeast Quarter.

Temporary Easement (Construction – Parcel “B”) All that part of the Northeast Quarter of Section 17, Township 25 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas; thence on an assumed bearing of S00°47’42”E, 2622.57 feet along the west line of said Quarter to the Point of Beginning: Thence S45°13’29”E, 45.96 feet to the Point of Termination, said point being the south line of said Northeast Quarter. Said tract contains 528 sq. ft. (0.01 acres), more or less.

2. The Buyer hereby agrees to purchase and pay to the Seller the sum of Five Hundred Dollars and No Cents (\$500.00) in the manner following, to-wit:  
cash at closing, which sum the Seller agrees is adequate compensation for such conveyance to Buyer of the above described real property, a temporary construction easement, any and all damages including but not limited to severance, crops at time of construction, crops for one year after initiation of construction, drainage and fencing.
3. A complete abstract of title certified to date, or a title insurance company's commitment to insure, to the above described real property, showing a merchantable title vested in the Seller, subject to easements and restrictions of record is required. The Title Evidence shall be sent to Property Management Division for examination by the Buyer as promptly and expeditiously as possible, and it is understood and agreed that the Seller shall have a reasonable time after said Title Evidence has been examined in which to correct any defects in title.
4. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.
5. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before October 31, 2009.
6. The Seller agrees to convey the above described premises with any and all personal property removed from within the easement area(s). Seller further agrees that any maintenance and use of said easement shall be in a manner that does not interfere with or endanger the construction, operations and maintenance of Buyer's improvements.
7. Possession to be given to Buyer on date of closing.
8. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid 0% by Seller and 100% by Buyer. Buyer will pay 100% closing costs.
9. In the event there are crop damages outside the easement area during construction or, crop damages resulting from the Buyer's other maintenance, operation, replacement or repairs to the pipeline, the Seller hereby agrees to file a claim with the City of Wichita, KS, City Clerk's Office, 455 North Main, Wichita, KS 67202, (316)268-4529.

10. Buyer and Seller hereby agree that Buyer, contractors and assigns will remove, store and reinstall topsoil removed from the easement corridor as a result of construction. Said topsoil, separate from bedding soil, will be temporarily stored within a temporary construction easement.

11. Buyer hereby agrees that the finished grade will match the existing grade as it currently exists upon completion of the project.

12. Site Assessment

A. At any time prior to closing of this Agreement, the buyer shall have the right to conduct or cause to be conducted an environmental site assessment and/or testing on the property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the property, the Buyer shall have the right to void this agreement upon notice to the Seller, in which event neither party shall be under any further obligation to the other, with the exception that Seller shall return to Buyer any deposit made hereunder.

B. The Buyer or its agents shall have the right, without the obligation, to enter upon the property prior to closing to undertake an environmental site assessment or any other inspection of the property at the Buyer's sole expense.


C. Provided, however, Buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to this paragraph. If a site assessment cannot be completed prior to the closing date set herein, then the Buyer and Seller shall, unless Buyer chooses to void this agreement, close within ten (10) days of the completion of such site assessment. The Buyer shall, if Buyer determines that a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment.


13. Buyer agrees to indemnify and hold harmless Seller from any and all claims for personal injury and/or property damage resulting from any and all claims, expenses, suits or other costs relating to Buyer's occupancy of the subject property prior to closing. Buyer's occupancy of the subject property prior to execution shall be completely at the risk of Buyer and Seller shall bear no responsibility whatsoever for the actions of Buyer and/or its contractors or subcontractors for matters related to such occupancy.

14. Paragraphs 6, 9-11 and 13 shall survive the closing.

**WITNESS OUR HANDS AND SEALS** the day and year first above written.

**SELLER:**

  
David H. Neises, husband

  
Marlene H. Neises, wife

**BUYER:**

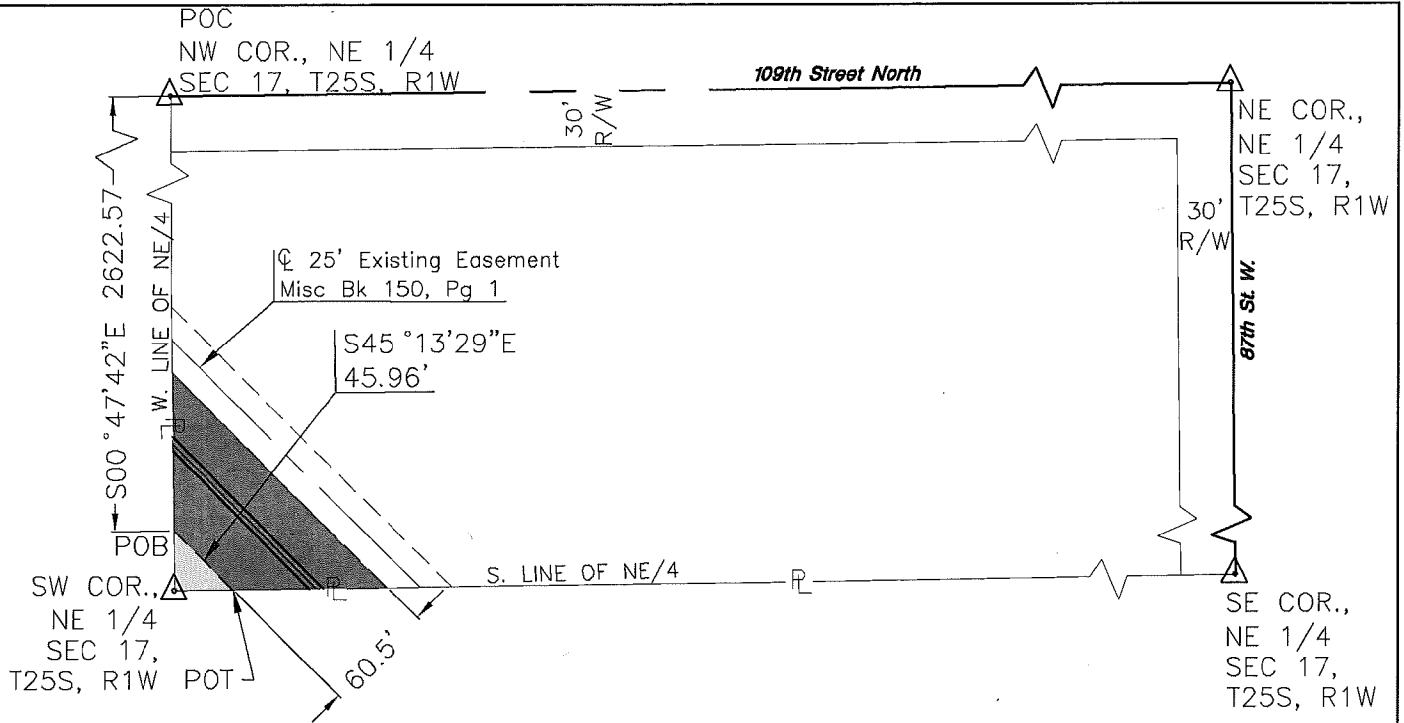
\_\_\_\_\_  
Carl Brewer, Mayor

**ATTEST:**

\_\_\_\_\_  
Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Gary E. Rebenstorf, Director of Law



#### EASEMENT

A 60.5 feet wide strip of land lying on the left side (northeasterly side) of a line described as: Commencing at the northwest corner of the Northeast Quarter of Section 17, Township 25 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas; thence on an assumed bearing of S00°47'42"E, 2622.57 feet along the west line of said Northeast Quarter to the Point of Beginning; thence S45°13'29"E, 45.96 feet to the Point of Termination, said point being on the south line of said Northeast Quarter. Said tract contains 6444 sq. ft. (0.15 acres), more or less

The above easement adjoins the southwesterly side of an easement as described in Condemnation Case NO. 104,110 and recorded in Miscellaneous Book 150, Page 1.

The sidelines of the above described strip of land are to be shortened or lengthened to form continuous lines and to terminate on the west line of said Northeast Quarter and on the south line of said Northeast Quarter.

#### CONSTRUCTION EASEMENT

All that part of the Northeast Quarter of Section 17, Township 25 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas lying south and west of a line described as: Commencing at the northwest corner of the Northeast Quarter of Section 17, Township 25 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas; thence on an assumed bearing of S00°47'42"E, 2622.57 feet along the west line of said Quarter to the Point of Beginning; thence S45°13'29"E, 45.96 feet to the Point of Termination, said point being on the south line of said Northeast Quarter. Said tract contains 528 sq. ft. (0.01 acres), more or less

#### OWNER:

Neises, David H.  
& Marlene H.  
10743 N TYLER RD

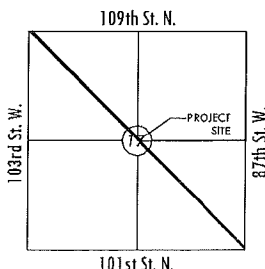
SCALE: 1" = 100'

#### LEGEND

POC - Point of Commencement  
POB - Point of Beginning  
POT - Point of Termination

Easement (6444 sq. ft.)(0.15 acres)  
 Construction Easement (528 sq. ft.) (0.01 acres)

Proposed Water Line



VICINITY MAP



**CDM**

Camp Dresser & McKee  
345 Riverview, Ste. 520  
Wichita, KS 67203  
Tel: (316) 660-6700  
consulting • engineering • construction • operations

**MKEC**  
ENGINEERING  
CONSULTANTS, INC.

I:\MAP\2008\08248\DWG APRIL 2009\TRACT MAPS\63.DWG

THIS TRACT EXHIBIT DOES NOT CONSTITUTE A BOUNDARY SURVEY PLAT

#### DIAGONAL TRANSMISSION MAIN AND RIVER INTAKE LINE

PROJECT NAME

TRACT 63

SHEET TITLE

DFL  
DESIGNED BY:

DSN/AAM  
DRAWN BY:

JCM  
CHECKED BY:

APRIL 2009  
DATE

08248  
JOB NO.

1 / 1  
SHEET OF





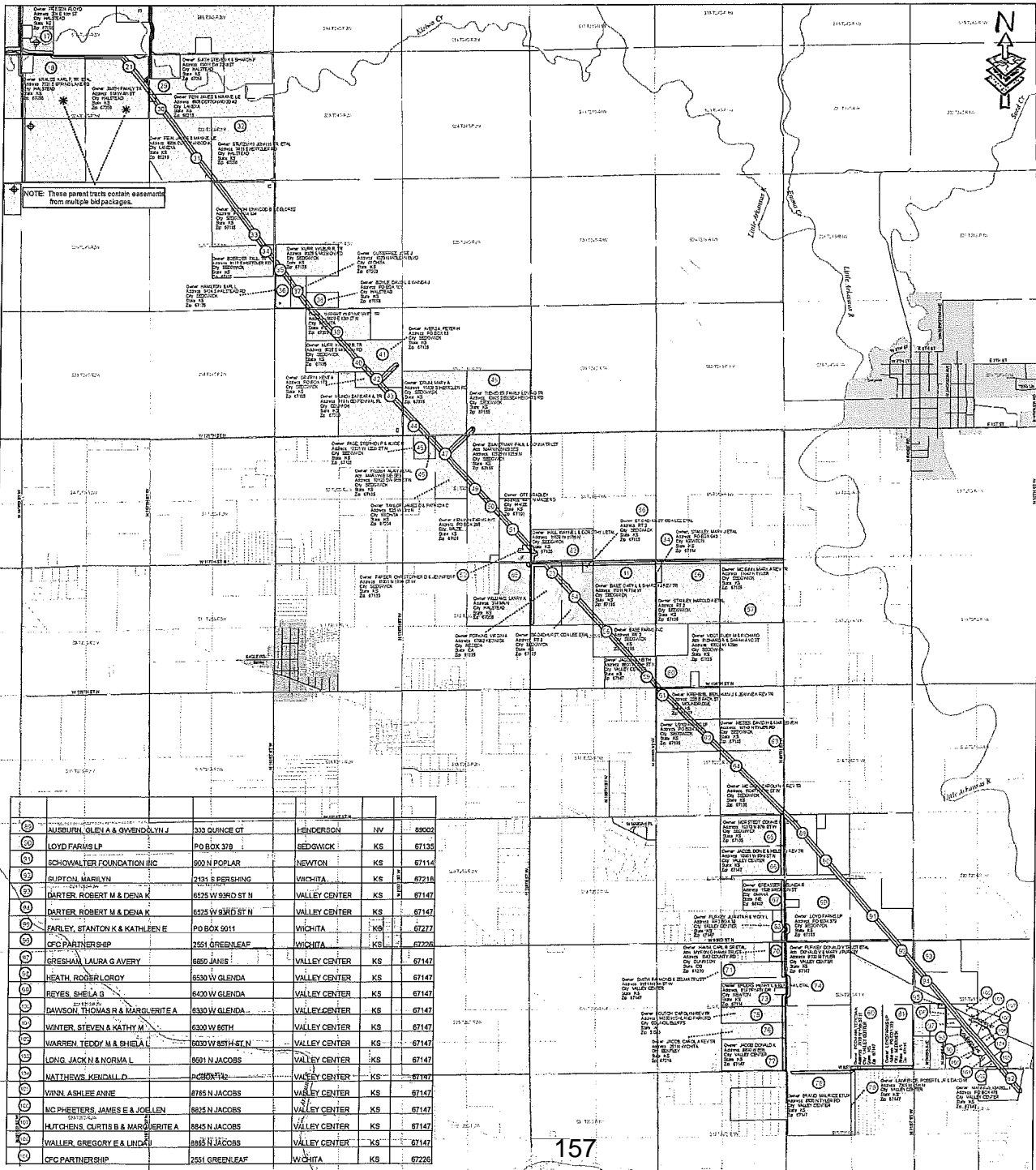
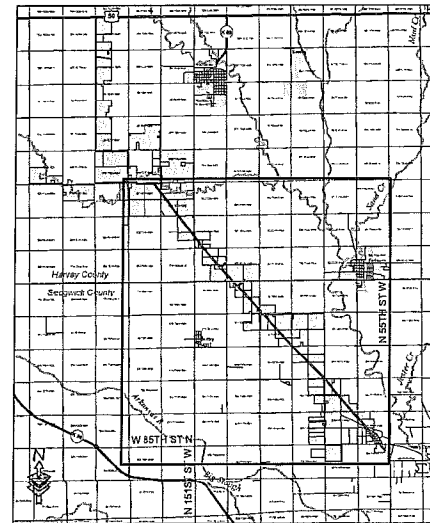
# BID PACKAGE 1

## Property Acquisition Map

**Legend**

- Section Lines
- City Limits
- County Boundaries
- Streets and Roads
- Highways
- Rivers and Streams
- Parent Tracts
- Bid Package 1 Easements
- Bid Package 2 Easements
- Bid Package 3 Easements
- Well Location
- RR ## Well ID Number
- Parent Tract ID Number

Q:\20070705\Burd\Project GIS\ASR Bid Package2 Easements.mxd  
 Last saved 2/2/2009 by SAD  
 NAD\_1983\_StatePlane\_Kansas\_South\_FIPS\_1502\_Feet  
 Projection: Lambert\_Conformal\_Conic  
 Professional Engineering Consultants, P.A.  
 Wichita, KS 67202  
 Ph. (316) 262-2691  
 © 2008 Professional Engineering Consultants, P.A.



**CITY OF WICHITA**  
**City Council Meeting**  
November 17, 2009

**TO:** Mayor and City Council Members

**SUBJECT:** Partial Acquisition of 12433 East Harry for the Harry: Greenwich to 127<sup>th</sup> Street East Road Improvement Project (District II)

**INITIATED BY:** Office of Property Management

**AGENDA:** Consent

---

**Recommendation:** Approve the acquisition.

**Background:** On June 2, 2009, City Council authorized the design concept and right-of-way acquisition for the Harry Street: Greenwich Road to 127<sup>th</sup> Street East road project. The proposed design concept is a three lane roadway with two through lanes and a center two-way left turn lane. Drainage improvements will be included with the project as well as a 10 foot wide bike and pedestrian path on the south side of the street. Left turn lanes will be provided at all four approaches to the Harry Street and 127th Street East intersection. The property at 12433 East Harry is improved with a single-family residence. The improvements are removed from the proposed project. The proposed right-of-way is a 10 foot strip of land consisting of 3,135 square feet. The temporary easement during construction is 15 feet wide and consists of 4,702 square feet.

**Analysis:** The owner declined the estimated market value of \$4,200. The \$4,200 was comprised of \$3,920 or \$1.25 per square foot for the 3,135 right-of-way and \$282, \$.06 per square foot for the temporary easement. The owner has agreed to accept \$4,632 for the proposed acquisition. The \$4,632 amount is comprised of \$4,075 (or \$1.30 per square foot) for the right-of-way, \$305 (or \$.065 per square foot) for the temporary easement and \$250 as cost-to-cure the gravel driveway entrance. The proposed settlement is reasonable and prudent.

**Financial Considerations:** The funding sources for the project are General Obligation Bonds and Federal Grants. A budget of \$5,132 is requested. This includes \$4,632 for the acquisition and \$500 for closing costs and title insurance.

**Goal Impact:** The acquisition of this parcel is necessary to ensure efficient infrastructure of roads and storm water drainage through a developed part of the City.

**Legal Considerations:** The Law Department has approved the contract as to form.

**Recommendations/Actions:** It is recommended that the City Council; 1) Approve the Budget; 2) Approve the Real Estate Purchase Contract and 3) Authorize the necessary signatures.

**Attachments:** Real estate purchase agreement, tract maps and aerial map.

## REAL ESTATE PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2009 by and between Brian J. Cleary, a single person, party of the First Part, hereinafter referred to as "Seller," whether one or more, and the City of Wichita, Kansas, a municipal corporation, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

**WITNESSETH:** That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer by a warranty deed the following described real property, situated in Sedgwick County, Kansas, to-wit:

The north 10.00 feet of a parcel described as Beginning 104 feet East and 40.00 feet South of the Northwest corner of the East Half of the Northeast Quarter of Section 34, Township 27 South, Range 2 East of the 6<sup>th</sup> P.M., Sedgwick County, Kansas; thence East 313.42 feet; thence South, 377.42 feet; thence West, 313.42 feet; thence North to the place of beginning.

2. The Seller does hereby agree to convey to the Buyer by a temporary construction easement the following described real property, situated in Sedgwick County, Kansas, to-wit:

The south 15.00 feet of the north 25.00 feet of a parcel described as Beginning 104 feet East and 40.00 feet South of the Northwest corner of the East Half of the Northeast Quarter of Section 34, Township 27 South, Range 2 East of the 6<sup>th</sup> P.M., Sedgwick County, Kansas; thence East 313.42 feet; thence South, 377.42 feet; thence West, 313.42 feet; thence North to the place of beginning.

3. The Buyer hereby agrees to purchase, and pay to the Seller, as consideration for the conveyance to him of the above-described real property, the sum of Four Thousand Six Hundred Thirty-Two Dollars and Zero Cents (\$4,632.00) in the manner following to-wit: cash at closing.
4. Buyer and Seller hereby agree that the closing is to occur with First American Title at 434 North Main, Wichita, Kansas, 67202.
5. A title insurance company's commitment to insure or a complete abstract of title certified to date, to the above-described real property, showing a merchantable title vested in the seller, subject to easements and restrictions of record is required. The Title Evidence shall be sent to the Office of Property Management for the City of Wichita for examination by the Buyer as promptly and expeditiously as possible and it is understood and agreed that the Seller shall have a reasonable time after said Title Evidence has been examined in which to correct any defects in title. If defects in title are not corrected to Buyer's satisfaction, Buyer, at Buyer's option, may cancel this contract.

In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid 0% by Seller and 100% by Buyer.

6. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.
7. It is further agreed by and between the parties hereto that all rentals, insurance (if policies acceptable to Buyer), and interest, if any shall be adjusted and prorated as of the closing date. Taxes and specials shall be pro-rated for calendar year on the basis of 100% of taxes levied for the prior year. All prior years specials and taxes shall be current at time of closing.
8. The Seller further agrees to convey the above-described premises in the same condition as it is now, reasonable wear and tear accepted.
9. Seller shall place no encumbrances on the property during the period from execution of this contract to closing. In addition, Seller shall be responsible for carrying such insurance as is reasonable on the improvements up until the closing date.
10. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before November 30, 2009 subject to the conditions of Items 5 and 13.
11. Possession to be given to Buyer at closing.
12. Closing costs shall be paid 100% by Buyer and 0% by Seller.
13. Seller hereby agrees to cooperate with the Buyer's Title Company to provide information, when requested, required to facilitate the closing.
14. Site Assessment
  - A. At any time prior to the closing of this agreement, Buyer shall have the right to conduct or cause to be conducted an environmental site assessment and/or testing on the property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the property, Buyer shall have the right to void this agreement upon notice to Seller, in which event neither party shall be under any further obligation to the other, with the exception that Seller shall return to Buyer any deposit made hereunder.
  - B. Provided, however, Buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to Paragraph A above. If a site assessment is completed after the closing date set herein, then Buyer and Seller shall close or Buyer shall advise Seller that this agreement is being voided pursuant to said paragraph within ten (10) days of the completion of the site assessment. Buyer shall, if Buyer determines a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment after this agreement is executed by all parties.

**WITNESS OUR HANDS AND SEALS** the day and year first above written.

**SELLER:**

  
\_\_\_\_\_  
Brian J. Cleary

11-4-09

**BUYER:**  
By Direction of the City Council

\_\_\_\_\_  
Carl Brewer, Mayor

**ATTEST:**

\_\_\_\_\_  
Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

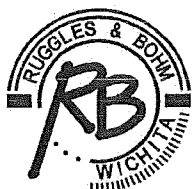
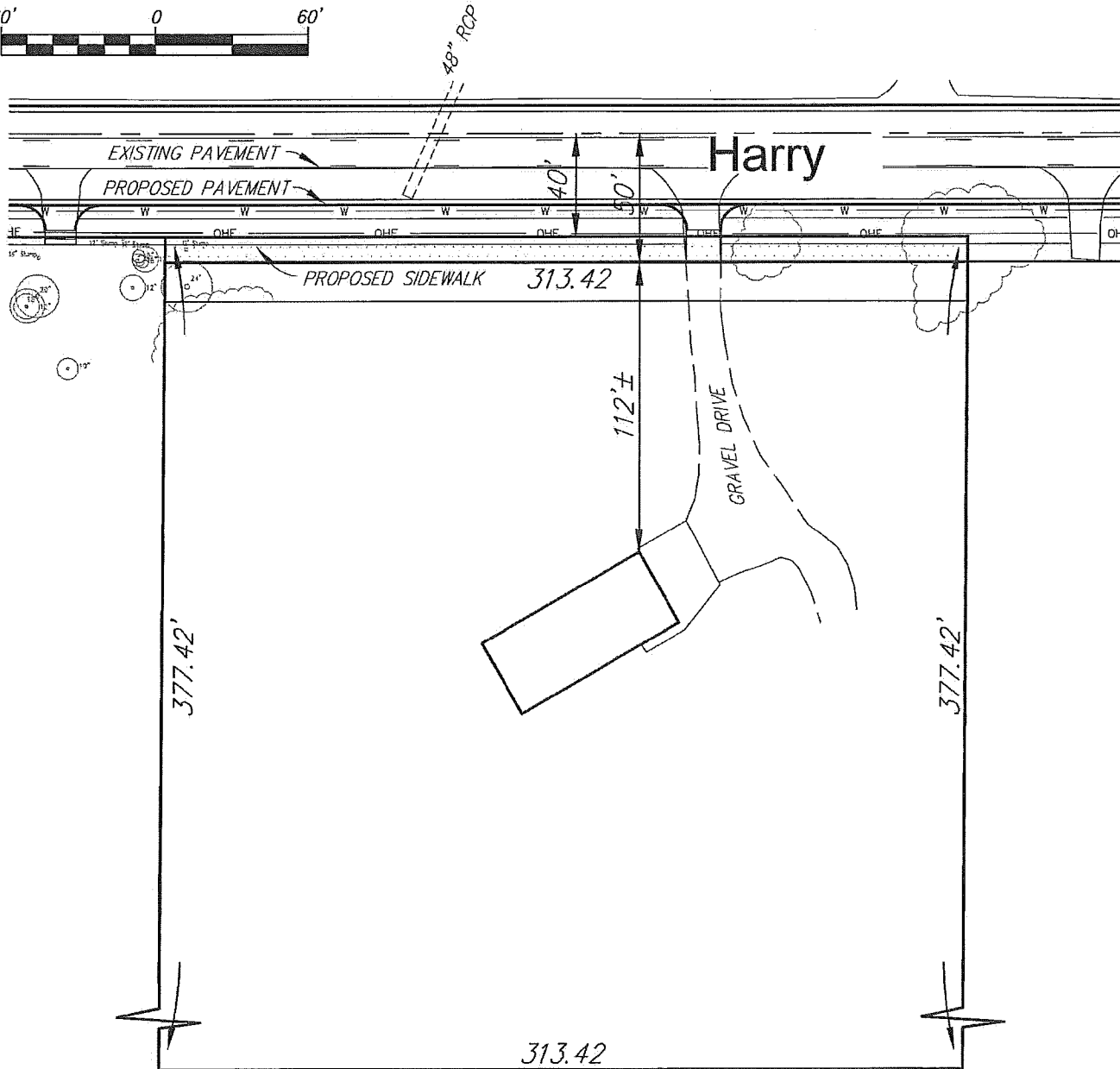
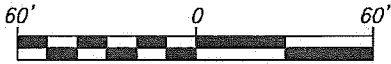
\_\_\_\_\_  
Gary E. Rebenstorf, Director of Law

# RIGHT OF WAY EXHIBIT



Cleary, Brian J  
12433 E Harry  
C 0047800UP

Right Of Way Area: 3,135 Sq. Ft.±



Ruggles & Bohm, P.A.  
Engineering, Surveying, Land Planning

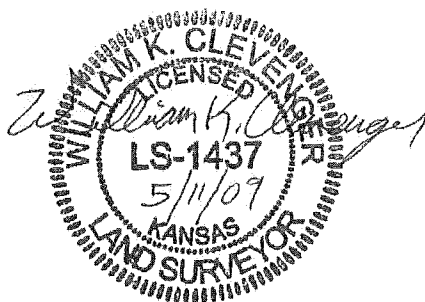
924 North Main  
Wichita, Kansas 67203  
www.rbkansas.com

(316) 264-8008  
(316) 264-4621 fax  
E-mail: info@rbkansas.com

6-22-09

**C 0047800UP Right of Way**

The north 10.00 feet of a parcel described as Beginning 104 feet East and 40 feet South of the Northwest corner of the East Half of the Northeast Quarter of Section 34, Township 27 South, Range 2 East of the 6<sup>th</sup> P.M., Sedgwick County, Kansas; thence East, 313.42 feet; thence South, 377.42 feet; thence West, 313.42 feet; thence North to the place of beginning.

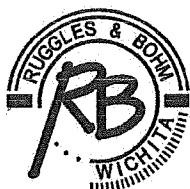
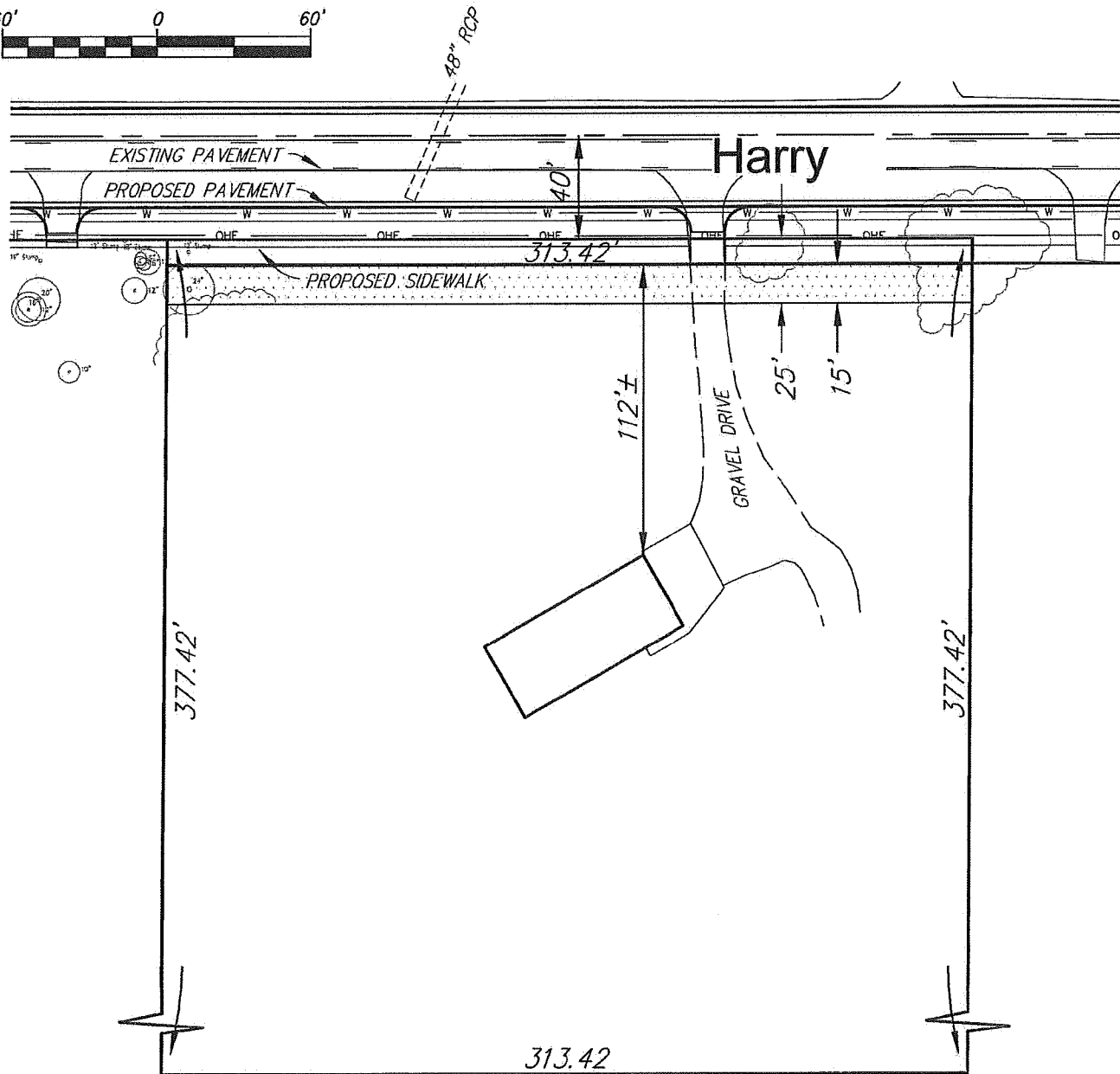
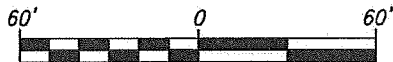


# TEMPORARY CONSTRUCTION EASEMENT EXHIBIT



Cleary, Brian J  
12433 E Harry  
C 0047800UP

Easement Area: 4,702 Sq. Ft.±



Ruggles & Bohm, P.A.  
Engineering, Surveying, Land Planning

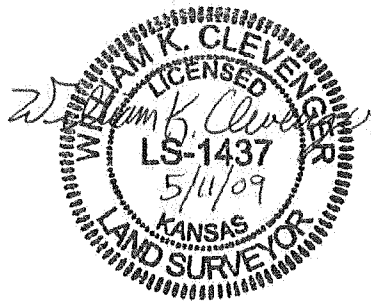
924 North Main  
Wichita, Kansas 67203  
www.rbkansas.com

(316) 264-8008  
(316) 264-4621 fax  
E-mail: info@rbkansas.com



6-22-09  
**C 0047800UP – Temporary Construction Easement**

The south 15.00 feet of the north 25.00 feet of a parcel described as Beginning 104 feet East and 40 feet South of the Northwest corner of the East Half of the Northeast Quarter of Section 34, Township 27 South, Range 2 East of the 6<sup>th</sup> P.M., Sedgwick County, Kansas; thence East, 313.42 feet; thence South, 377.42 feet; thence West, 313.42 feet; thence North to the place of beginning.





# 12433 East Harry



Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.

- Identified Features
- Selected Features
- Historic Districts
- Old Town
- Delano Overlay District
- NO
- YES
- Property Parcels
- Subdivisions
- Roads
- State Highway
- US Federal Highway
- Interstate
- KTA
- Arterial
- Collector
- Minor
- Ramp
- Railroads
- Quarter Section
- Waterways
- Streams
- Historic Sites
- REGIONAL
- STATE/NATIONAL
- STATE
- Historic Environs
- Parks
- Airports
- SDE RASTER, S-DE DATA, ORTHO
- City Limits

**CITY OF WICHITA**  
**City Council Meeting**  
**November 17, 2009**

**TO:** Mayor and City Council Members

**SUBJECT:** Partial Acquisition of land in the West Half of the Northwest Quarter of Section 5, Township 24 South, Range 2 West of the 6<sup>th</sup> Principal Meridian for the Integrated Local Water Supply Plan (Harvey County)

**INITIATED BY:** Office of Property Management

**AGENDA:** Consent

---

**Recommendation:** Approve the acquisition.

**Background:** On August 3, 1993, City Council approved the Water Supply Plan prepared by Burns & McDonnell/MKEC Engineering Consultants. The Plan identified cost-effective water resource projects to meet the City's future water needs. On October 10, 2000, City Council approved the projects and implementation of the plan. One portion of the Water Supply Plan is the groundwater recharge project. The groundwater recharge includes the capture of above base flow water (water which is generated from rainfall runoff above the base river flow) in the Little Arkansas River to be transferred to and stored in the aquifer. The recovery and use of this water will meet future demands for the City of Wichita. Certain sites have been identified as necessary for the capture of above base flow water, locations for water treatment facilities, recharge/recovery wells, and recharge basins. The agricultural tract in the West half of the Northwest Quarter of Section 5, more specifically on the southeast side of Garden Prairie Road and SW 36<sup>th</sup> Street, a vacant parcel is impacted as a result of the project. The proposed pipeline will be located within right-of-way however; a temporary easement during construction is required.

**Analysis:** The City requires a temporary construction easement consisting of 2.9 acres from the subject property. The property is zoned and utilized for agricultural use. There are no improvements impacted by the construction. The seller has agreed to accept \$1,482, the value based on a market analysis of comparable properties. The offer in the amount of \$1,482 is comprised of 2.9 acres at \$511 an acre.

**Financial Considerations:** A budget of \$2,028 is requested. The budget request includes \$1,482 for the acquisition, \$600 for title work, title insurance, closing costs, recording fees and administrative fees. Funding for this project is included in the Capital Improvement Plan (CIP) in W-549, Water Supply Plan Phase III, which has an available funding of over \$7.6 million.

**Goal Impact:** The acquisition of this parcel is necessary to ensure efficient infrastructure.

**Legal Considerations:** The Law Department has approved the contract and easement as to form.

**Recommendation/Action:** It is recommended that the City Council approve the agreement and authorize the necessary signatures.

**Attachments:** Real estate purchase agreements, tract map and aerial.

## EASEMENT PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this 25 day of September 2009 by and between Mark G. Raiche, David D. Raiche and Clayton J. Raiche, as tenants in common, party of the First Part, hereinafter referred to as "Seller," whether one or more, and City of Wichita, KS, a Municipal Corporation, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer by a good and sufficient Permanent Easement and/or Temporary Construction Easement of the following described real property, situated in Harvey County, Kansas, to wit:

Temporary Easement (Construction – Parcel "A") A 50 foot wide easement, the Westerly line of which is coincident with the Easterly line of the existing Right-of-Way granted to the City of Wichita, Sedgwick County, Kansas, as recorded in Harvey County Miscellaneous Record Book 146 at page 292, near the West side of the West Half of the Northwest Quarter of Section Five, Township Twenty-four south, Range Two West of the Sixth Principal Meridian, Harvey county, Kansas. Said tract contains 2.9 acres, more or less, excluding Road Right-of-Way.

2. The Buyer hereby agrees to purchase and pay to the Seller the sum of One Thousand Four Hundred Eighty-two Dollars and No Cents (\$1,482.00) in the manner following, to-wit: cash at closing, which sum the Seller agrees is adequate compensation for such conveyance to Buyer of the above described real property, a temporary construction easement, any and all damages including but not limited to severance, crops at time of construction, crops for one year after initiation of construction, drainage and fencing.

3. A complete abstract of title certified to date, or a title insurance company's commitment to insure, to the above described real property, showing a merchantable title vested in the Seller, subject to easements and restrictions of record is required. The Title Evidence shall be sent to Property Management Division for examination by the Buyer as promptly and expeditiously as possible, and it is understood and agreed that the Seller shall have a reasonable time after said Title Evidence has been examined in which to correct any defects in title.

4. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.

5. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before October 30, 2009.

6. The Seller agrees to convey the above described premises with any and all personal property removed from within the easement area(s). Seller further agrees that any maintenance and use of said easement shall be in a manner that does not interfere with or endanger the construction, operations and maintenance of Buyer's improvements.

7. Possession to be given to Buyer on date of closing.

8. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid 0% by Seller and 100% by Buyer. Buyer will pay 100% closing costs.

9. In the event there are crop damages outside the easement area during construction or, crop damages resulting from the Buyer's other maintenance, operation, replacement or repairs to the pipeline, the Seller hereby agrees to file a claim with the City of Wichita, KS, City Clerk's Office, 455 North Main, Wichita, KS 67202, (316)268-4529.

10. Buyer and Seller hereby agree that Buyer, contractors and assigns will remove, store and reinstall topsoil removed from the easement corridor as a result of construction. Said topsoil, separate from bedding soil, will be temporarily stored within a temporary construction easement.

11. Buyer hereby agrees that the finished grade will match the existing grade as it currently exists upon completion of the project.

12. Site Assessment

A. At any time prior to closing of this Agreement, the buyer shall have the right to conduct or cause to be conducted an environmental site assessment and/or testing on the property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the property, the Buyer shall have the right to void this agreement upon notice to the Seller, in which event neither party shall be under any further obligation to the other, with the exception that Seller shall return to Buyer any deposit made hereunder.

B. The Buyer or its agents shall have the right, without the obligation, to enter upon the property prior to closing to undertake an environmental site assessment or any other inspection of the property at the Buyer's sole expense.

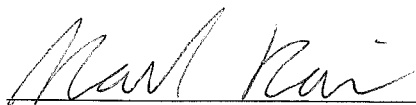
C. Provided, however, Buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to this paragraph. If a site assessment cannot be completed prior to the closing date set herein, then the Buyer and Seller shall, unless Buyer chooses to void this agreement, close within ten (10) days of the completion of such site assessment. The Buyer shall, if Buyer determines that a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment.

13. Buyer agrees to indemnify and hold harmless Seller from any and all claims for personal injury and/or property damage resulting from any and all claims, expenses, suits or other costs relating to Buyer's occupancy of the subject property prior to closing. Buyer's occupancy of the subject property prior to execution shall be completely at the risk of Buyer and Seller shall bear no responsibility whatsoever for the actions of Buyer and/or its contractors or subcontractors for matters related to such occupancy.

14. Paragraphs 6, 9-11 and 13 shall survive the closing.

WITNESS OUR HANDS AND SEALS the day and year first above written.

**SELLER:**



Mark G. Raiche, tenant in common

SEE ATTACHED CERTIFICATE M.C. 9-25-09

**BUYER:**

**ATTEST:**

\_\_\_\_\_  
Carl Brewer, Mayor

\_\_\_\_\_  
Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Gary E. Rebenstorf, Director of Law

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of LOS ANGELES

On SEPTEMBER 25, 2009 before me, MONICA CICCONE 'NOTARY PUBLIC',  
Date Here Insert Name and Title of the Officer

personally appeared MARK G. RAICHE  
Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp Above

Signature: [Signature]  
Signature of Notary Public

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: EASEMENT PURCHASE CONTRACT

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_ Signer's Name: \_\_\_\_\_

☐ Corporate Officer — Title(s): \_\_\_\_\_ ☐ Corporate Officer — Title(s): \_\_\_\_\_

☐ Individual ☐ Individual

☐ Partner — ☐ Limited ☐ General ☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact ☐ Attorney in Fact

☐ Trustee ☐ Trustee

☐ Guardian or Conservator ☐ Guardian or Conservator

☐ Other: \_\_\_\_\_ ☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_ Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

## EASEMENT PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2009 by and between Mark G. Raiche, David D. Raiche and Clayton J. Raiche, as tenants in common, party of the First Part, hereinafter referred to as "Seller," whether one or more, and City of Wichita, KS, a Municipal Corporation, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer by a good and sufficient Permanent Easement and/or Temporary Construction Easement of the following described real property, situated in Harvey County, Kansas, to wit:

Temporary Easement (Construction – Parcel "A") A 50 foot wide easement, the Westerly line of which is coincident with the Easterly line of the existing Right-of-Way granted to the City of Wichita, Sedgwick County, Kansas, as recorded in Harvey County Miscellaneous Record Book 146 at page 292, near the West side of the West Half of the Northwest Quarter of Section Five, Township Twenty-four south, Range Two West of the Sixth Principal Meridian, Harvey county, Kansas. Said tract contains 2.9 acres, more or less, excluding Road Right-of-Way.

2. The Buyer hereby agrees to purchase and pay to the Seller the sum of One Thousand Four Hundred Eighty-two Dollars and No Cents (\$1,482.00) in the manner following, to-wit: cash at closing, which sum the Seller agrees is adequate compensation for such conveyance to Buyer of the above described real property, a temporary construction easement, any and all damages including but not limited to severance, crops at time of construction, crops for one year after initiation of construction, drainage and fencing.

3. A complete abstract of title certified to date, or a title insurance company's commitment to insure, to the above described real property, showing a merchantable title vested in the Seller, subject to easements and restrictions of record is required. The Title Evidence shall be sent to Property Management Division for examination by the Buyer as promptly and expeditiously as possible, and it is understood and agreed that the Seller shall have a reasonable time after said Title Evidence has been examined in which to correct any defects in title.

4. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.

5. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before October 30, 2009.


6. The Seller agrees to convey the above described premises with any and all personal property removed from within the easement area(s). Seller further agrees that any maintenance and use of said easement shall be in a manner that does not interfere with or endanger the construction, operations and maintenance of Buyer's improvements.



7. Possession to be given to Buyer on date of closing.
8. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid 0% by Seller and 100% by Buyer. Buyer will pay 100% closing costs.
9. In the event there are crop damages outside the easement area during construction or, crop damages resulting from the Buyer's other maintenance, operation, replacement or repairs to the pipeline, the Seller hereby agrees to file a claim with the City of Wichita, KS, City Clerk's Office, 455 North Main, Wichita, KS 67202, (316)268-4529.
10. Buyer and Seller hereby agree that Buyer, contractors and assigns will remove, store and reinstall topsoil removed from the easement corridor as a result of construction. Said topsoil, separate from bedding soil, will be temporarily stored within a temporary construction easement.
11. Buyer hereby agrees that the finished grade will match the existing grade as it currently exists upon completion of the project.
12. Site Assessment
  - A. At any time prior to closing of this Agreement, the buyer shall have the right to conduct or cause to be conducted an environmental site assessment and/or testing on the property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the property, the Buyer shall have the right to void this agreement upon notice to the Seller, in which event neither party shall be under any further obligation to the other, with the exception that Seller shall return to Buyer any deposit made hereunder.
  - B. The Buyer or its agents shall have the right, without the obligation, to enter upon the property prior to closing to undertake an environmental site assessment or any other inspection of the property at the Buyer's sole expense.
  - C. Provided, however, Buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to this paragraph. If a site assessment cannot be completed prior to the closing date set herein, then the Buyer and Seller shall, unless Buyer chooses to void this agreement, close within ten (10) days of the completion of such site assessment. The Buyer shall, if Buyer determines that a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment.
13. Buyer agrees to indemnify and hold harmless Seller from any and all claims for personal injury and/or property damage resulting from any and all claims, expenses, suits or other costs relating to Buyer's occupancy of the subject property prior to closing. Buyer's occupancy of the subject property prior to execution shall be completely at the risk of Buyer and Seller shall bear no responsibility whatsoever for the actions of Buyer and/or its contractors or subcontractors for matters related to such occupancy.
14. Paragraphs 6, 9-11 and 13 shall survive the closing.

WITNESS OUR HANDS AND SEALS the day and year first above written.

**SELLER:**

 *tenant in common*

\_\_\_\_\_  
David D. Raiche, tenant in common

**BUYER:**

**ATTEST:**

\_\_\_\_\_  
Carl Brewer, Mayor

\_\_\_\_\_  
Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Gary E. Rebenstorf, Director of Law

## EASEMENT PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this 28 day of September, 2009 by and between Mark G. Raiche, David D. Raiche and Clayton J. Raiche, as tenants in common, party of the First Part, hereinafter referred to as "Seller," whether one or more, and City of Wichita, KS, a Municipal Corporation, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

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3. A complete abstract of title certified to date, or a title insurance company's commitment to insure, to the above described real property, showing a merchantable title vested in the Seller, subject to easements and restrictions of record is required. The Title Evidence shall be sent to Property Management Division for examination by the Buyer as promptly and expeditiously as possible, and it is understood and agreed that the Seller shall have a reasonable time after said Title Evidence has been examined in which to correct any defects in title.

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  - A. At any time prior to closing of this Agreement, the buyer shall have the right to conduct or cause to be conducted an environmental site assessment and/or testing on the property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the property, the Buyer shall have the right to void this agreement upon notice to the Seller, in which event neither party shall be under any further obligation to the other, with the exception that Seller shall return to Buyer any deposit made hereunder.
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14. Paragraphs 6, 9-11 and 13 shall survive the closing.

WITNESS OUR HANDS AND SEALS the day and year first above written.

**SELLER:**

Clayton J. Raiche 9-28-09  
Clayton J. Raiche, tenant in common

**BUYER:**

Carl Brewer, Mayor

**ATTEST:**

Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

Gary E. Rebenstorf, Director of Law

" See attached notarization on 9-28-2009 "

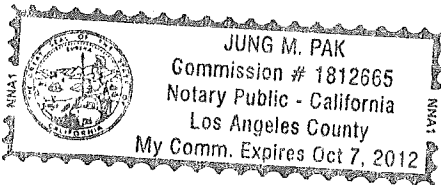
# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles

On September 28, 2009 before me, Jung M. Pak, Notary Public

personally appeared Clayton Joseph Raiche



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Jung M. Pak

Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document: Easement purchase Contract (Agreement)

Document Date: 9-28-2009

Number of Pages: Three

Signer(s) Other Than Named Above: N/A

### Capacity(ies) Claimed by Signer(s)

Signer's Name: Clayton J. Raiche

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☒ Other: Seller

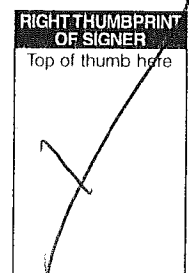
Signer Is Representing: \_\_\_\_\_

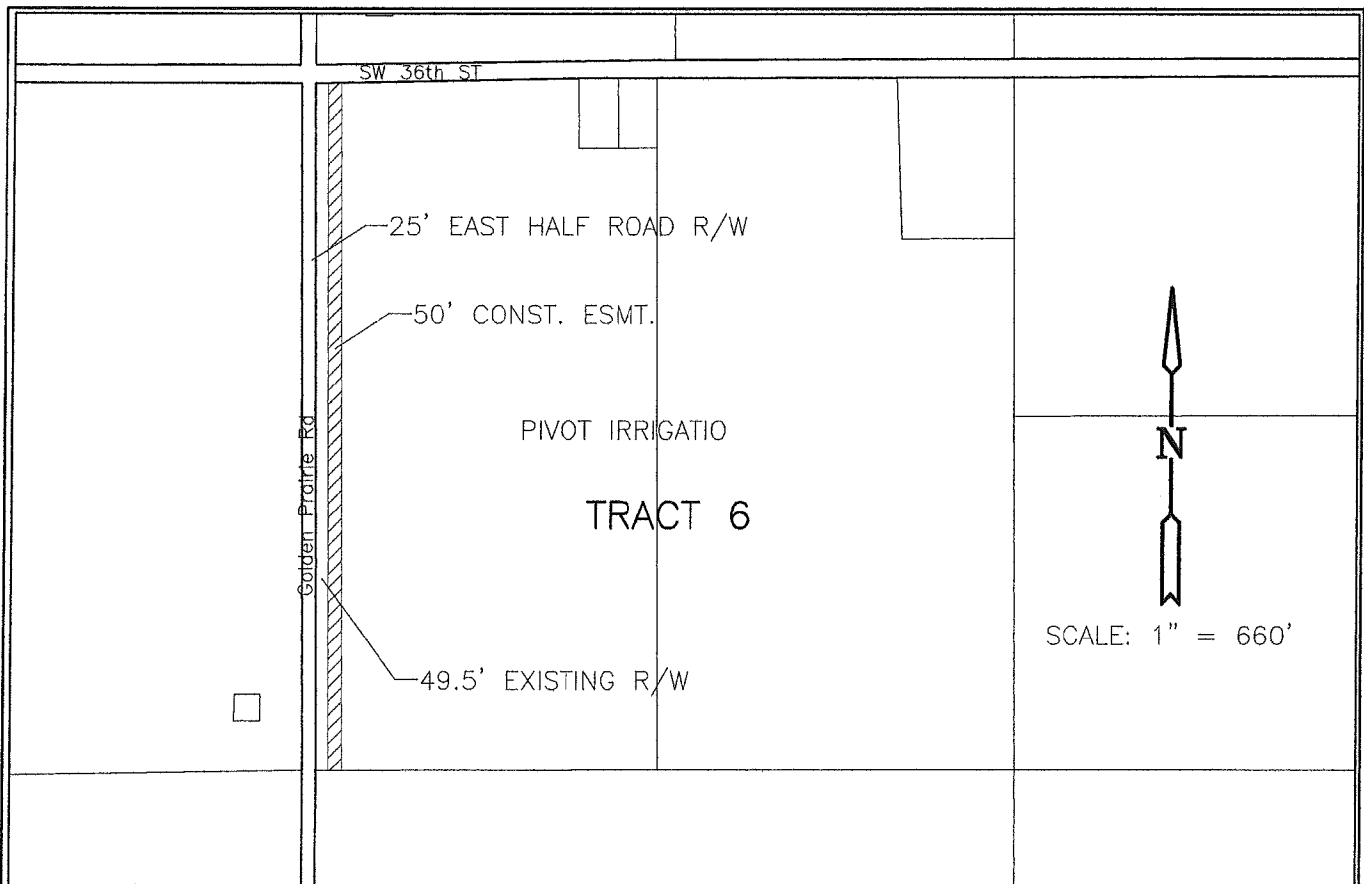


Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_







**CONSTRUCTION EASEMENT:**

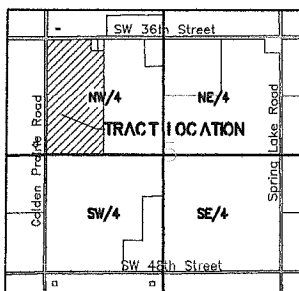
*A 50 foot wide easement, the Westerly line of which is coincident with the Easterly line of the existing Right-of-Way granted to the City of Wichita, Sedgwick County, Kansas, as recorded in Harvey County Miscellaneous Record Book 146 at page 292, near the West side of the West Half of the Northwest Quarter of Section Five, Township Twenty-four South, Range Two West of the Sixth Principal Meridian, Harvey County, Kansas. Said tract contains 2.9 acres, more or less, excluding road right-of-way.*

**LEGEND:**

-  Construction Easement
-  Easement

**OWNER:**

RAICHE, MARK G., DAVID D. &  
CLAYTON J.



**VICINITY MAP**



**CDM**  
Camp Dresser & McKee  
340 Riverchase Blvd.  
Wichita, KS 67209  
Tel (316) 635-4700  
consulting • engineering • construction • operations

**POE**  
POE & ASSOCIATES, INC.  
CONSULTING ENGINEERS

THIS TRACT EXHIBIT DOES NOT CONSTITUTE A BOUNDARY SURVEY PLAT

GOLDEN PRAIRIE RD. TRANSMISSION MAIN  
PROJECT NAME

TRACT 6  
SHEET TITLE

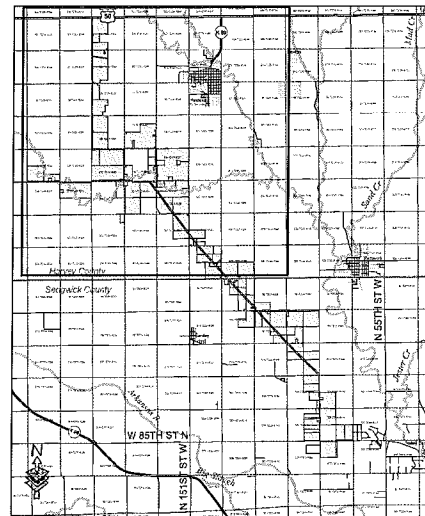
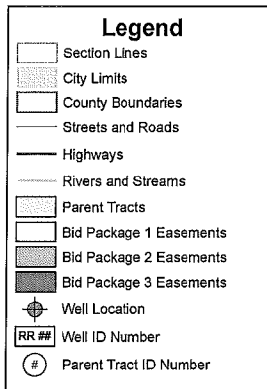
JGP MLT JMU  
DESIGN BY DRAWN BY CHECKED BY:

AUGUST 2009 788013 1 / 1  
DATE JOB NO. SHEET / OF



# BID PACKAGE 3

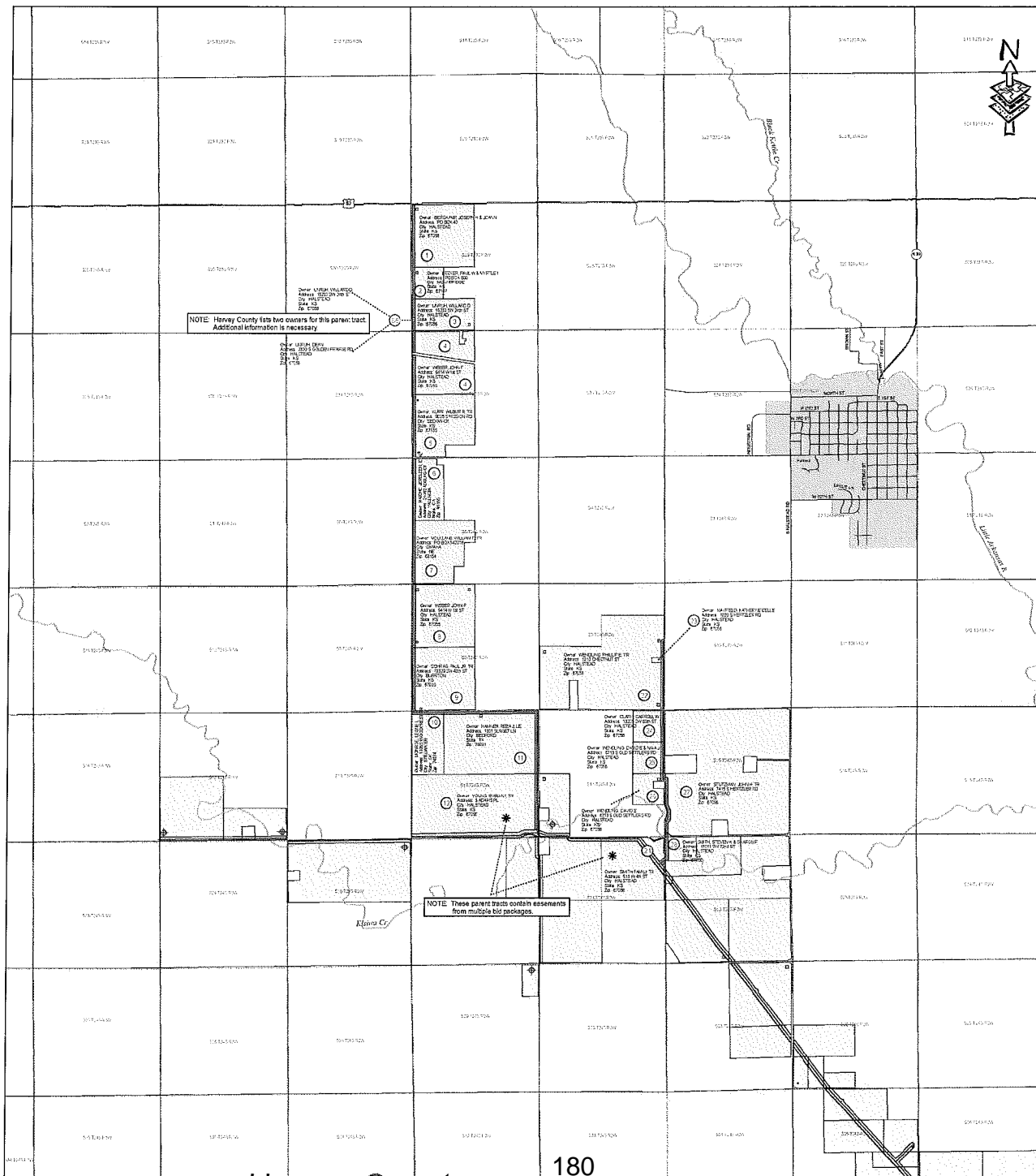
## Property Acquisition Map



Q:\2007\076858\rent\Project GIS\ASR Bid Package2 Easements.mxd  
Last saved 2/22/2009 by SAD

NAD\_1983\_StatePlane\_Kansas\_South\_FIPS\_1602\_Feet  
Projection Lambert\_Conformal\_Conic

Professional Engineering Consultants, P.A.  
303 S. Topeka  
Wichita, KS 67202  
Ph. (316) 262-2691  
© 2008 Professional Engineering Consultants, P.A.





**CITY OF WICHITA**  
**City Council Meeting**  
November 17, 2009

**TO:** Mayor and City Council Members

**SUBJECT:** Partial Acquisition of land in the Northeast Quarter of Section 11, Township 24 South, Range 3 West of the 6<sup>th</sup> Principal Meridian for the Integrated Local Water Supply Plan (Harvey County)

**INITIATED BY:** Office of Property Management

**AGENDA:** Consent

---

**Recommendation:** Approve the acquisition.

**Background:** On August 3, 1993, City Council approved the Water Supply Plan prepared by Burns & McDonnell/MKEC Engineering Consultants. The Plan identified cost-effective water resource projects to meet the City's future water needs. On October 10, 2000, City Council approved the projects and implementation of the plan. One portion of the Water Supply Plan is the groundwater recharge project. The groundwater recharge includes the capture of above base flow water (water which is generated from rainfall runoff above the base river flow) in the Little Arkansas River to be transferred to and stored in the aquifer. The recovery and use of this water will meet future demands for the City of Wichita. Certain sites have been identified as necessary for the capture of above base flow water, locations for water treatment facilities, recharge/recovery wells, and recharge basins. One particular site in the Northeast Quarter Section of Section 11, Township 24 South, and Range 3 West of the 6<sup>th</sup> P.M. is required for a pipeline easement. The proposed easement is the east 30-feet of the subject property together with a 35-foot temporary construction easement.

**Analysis:** The subject property is a vacant, buildable home site. The proposed pipeline will continue southward from an existing well site and serve future, Phase II recharge well sites. The pipeline easement will consist of 0.23-acres. The 35-foot wide temporary construction easement consists of 0.27 acres. No improvements are impacted as a result of the project. The seller has agreed to accept \$720 the value based on a market analysis of comparable properties. The offer in the amount of \$720 consists of \$490 (or \$2,130 an acre) for the pipeline easement and \$230 (or \$852 an acre) for the temporary easement.

**Financial Considerations:** A budget of \$1,270 is requested. The budget request includes \$720 for the acquisition, \$550 for title work, title insurance, closing costs, recording fees and administrative fees. Funding for this project is included in the Capital Improvement Plan (CIP) in W-549, Water Supply Plan Phase III, which has an available funding of over \$7.6 million.

**Goal Impact:** The acquisition of this parcel is necessary to ensure efficient infrastructure.

**Legal Considerations:** The Law Department has approved the contract and easement as to form.

**Recommendation/Action:** It is recommended that the City Council approve the agreement and authorize the necessary signatures.

**Attachments:** Real estate purchase agreement and permanent/temporary easement tract maps.

## EASEMENT PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this 5 day of Oct., 2009 by and between Jamie L. Becker, Husband, and Crystal G. Becker, Wife, as joint tenants, party of the First Part, hereinafter referred to as "Seller," whether one or more, and City of Wichita, KS, a Municipal Corporation, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer by a good and sufficient Permanent Easement and/or Temporary Construction Easement of the following described real property, situated in Harvey County, Kansas, to wit:

Permanent Easement All of the West 30 feet of the East 60 feet of the following described tract; Commencing at a point 106 rods South of the Northeast corner of Section Eleven (11), Township Twenty-four (24) South, Range Three (3) West of the 6<sup>th</sup> PM, Harvey County, Kansas for a point of beginning; thence West 330 feet, thence South 330 feet; thence East 330 feet; thence North 330 feet to the point of beginning. Said easement contains 0.23 acres, more or less.

Temporary Easement All of the West 35 feet of the East 95 feet of the following described tract; Commencing at a point 106 rods South of the Northeast corner of Section Eleven (11), Township Twenty-four (24) South, Range Three (3) West of the 6<sup>th</sup> PM, Harvey County, Kansas for a point of beginning; thence West 330 feet, thence South 330 feet; thence East 330 feet; thence North 330 feet to the point of beginning. Said easement contains 0.27 acres, more or less.

2. The Buyer hereby agrees to purchase and pay to the Seller the sum of Seven Hundred Twenty Dollars and No Cents (\$ 720.00) in the manner following, to-wit: cash at closing, which sum the Seller agrees is adequate compensation for such conveyance to Buyer of the above described real property, a temporary construction easement, any and all damages including but not limited to severance, crops at time of construction, crops for one year after initiation of onstruction, drainage and fencing.

3. A complete abstract of title certified to date, or a title insurance company's commitment to insure, to the above described real property, showing a merchantable title vested in the Seller, subject to easements and restrictions of record is required. The Title Evidence shall be sent to Property Management Division for examination by the Buyer as promptly and expeditiously as possible, and it is understood and agreed that the Seller shall have a reasonable time after said Title Evidence has been examined in which to correct any defects in title.

4. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.

5. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before October 31, 2009.

6. The Seller agrees to convey the above described premises with any and all personal property removed from within the easement area(s). Seller further agrees that any maintenance and use of said easement shall be in a manner that does not interfere with or endanger the construction, operations and maintenance of Buyer's improvements.

7. Possession to be given to Buyer on date of closing.

8. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid 0% by Seller and 100% by Buyer. Buyer will pay 100% closing costs.

9. In the event there are crop damages outside the easement area during construction or, crop damages resulting from the Buyer's other maintenance, operation, replacement or repairs to the pipeline, the Seller hereby agrees to file a claim with the City of Wichita, KS, City Clerk's Office, 455 North Main, Wichita, KS 67202, (316)268-4529.

10. Buyer and Seller hereby agree that Buyer, contractors and assigns will remove, store and reinstall topsoil removed from the easement corridor as a result of construction. Said topsoil, separate from bedding soil, will be temporarily stored within a temporary construction easement.

11. Buyer hereby agrees that the finished grade will match the existing grade as it currently exists upon completion of the project.

12. Site Assessment

A. At any time prior to closing of this Agreement, the buyer shall have the right to conduct or cause to be conducted an environmental site assessment and/or testing on the property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the property, the Buyer shall have the right to void this agreement upon notice to the Seller, in which event neither party shall be under any further obligation to the other, with the exception that Seller shall return to Buyer any deposit made hereunder.

B. The Buyer or its agents shall have the right, without the obligation, to enter upon the property prior to closing to undertake an environmental site assessment or any other inspection of the property at the Buyer's sole expense.

C. Provided, however, Buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to this paragraph. If a site assessment cannot be completed prior to the closing date set herein, then the Buyer and Seller shall, unless Buyer chooses to void this agreement, close within ten (10) days of the completion of such site assessment. The Buyer shall, if Buyer determines that a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment.

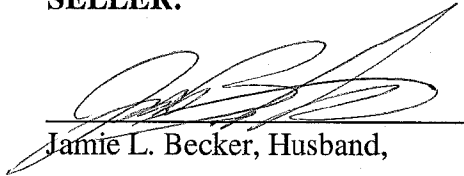
13. Buyer agrees to indemnify and hold harmless Seller from any and all claims for personal injury and/or property damage resulting from any and all claims, expenses, suits or other costs relating to Buyer's occupancy of the subject property prior to closing. Buyer's occupancy of the subject property prior to execution shall be completely at the risk of Buyer and Seller shall bear

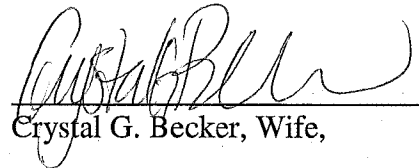
no responsibility whatsoever for the actions of Buyer and/or its contractors or subcontractors for matters related to such occupancy.

14. Paragraphs 6, 9-11 and 13 shall survive the closing.

**WITNESS OUR HANDS AND SEALS** the day and year first above written.

**SELLER:**

  
\_\_\_\_\_  
Jamie L. Becker, Husband,

  
\_\_\_\_\_  
Crystal G. Becker, Wife,

**BUYER:**

\_\_\_\_\_  
Carl Brewer, Mayor

**ATTEST:**

\_\_\_\_\_  
Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Gary E. Rebenstorf, Director of Law

## PIPELINE EASEMENT

**THIS EASEMENT** made this 5 day of October, 2009 by Jamie L. Becker, Husband, and Crystal G. Becker, Wife, as joint tenants, "Grantor" and The City of Wichita, Kansas, a Municipal Corporation, "Grantee".

**WITNESSETH:** That Grantor, in consideration of one dollar and other good and valuable considerations, the receipt whereof is hereby acknowledged, do hereby grant and convey unto Grantee a perpetual easement for the purpose of constructing, operating, maintaining, inspecting and repairing a pipeline for the transmission of water and other equipment which the Grantee shall deem necessary under the following described real estate situated in Harvey County, Kansas, to wit:

Permanent Easement All of the West 30 feet of the East 60 feet of the following described tract; Commencing at a point 106 rods South of the Northeast corner of Section Eleven (11), Township Twenty-four (24) South, Range Three (3) West of the 6<sup>th</sup> PM, Harvey County, Kansas for a point of beginning; thence West 330 feet, thence South 330 feet; thence East 330 feet; thence North 330 feet to the point of beginning. Said easement contains 0.23 acres, more or less.

This easement is for the installation and maintenance of underground utilities and associated appurtenances. Grantee shall not disturb or alter the surface of the property after the completion of the installation of any utilities installed hereunder without first obtaining the written consent of the Grantor, its heirs and assigns.

The amenities installed hereunder shall remain the property of Grantee, and Grantee shall have the right to inspect, rebuild, remove, repair, improve and make alterations to its facilities as it may from time to time deem advisable.

Grantor, his successors and assigns, may use the land within the easement for any purpose not inconsistent with the rights hereby granted, provided such use does not interfere with or endanger the construction, operations and maintenance of Grantee's facilities.

Grantee shall in no way interfere with the Grantors use and enjoyment of the surface of the property.

For the purpose of constructing, inspecting, maintaining or operating its facilities, Grantee shall have the right of ingress and egress from the easement over the lands of Grantor adjacent to said easement and lying between public or private roads. Grantee shall exercise said right in practicable manner whereby Grantee attempts to cause the least damage and inconvenience to Grantor. Grantee shall pay for any damages to growing crops caused by actions of Grantee in inspecting, maintaining or operating said facility.

Grantee shall not interfere with the ingress and egress of the Grantor, his heirs and assigns. Should it become necessary to relocate the facilities of the Grantee to aid in the future development of the subject property, Grantee hereby agrees to cooperate with Grantor in relocating said facilities. However, Grantor shall reimburse Grantee for the actual cost of relocating said facilities.

IN WITNESS WHEREOF: Grantor has signed these presents the day and year first written.

[Signature]  
Jamie L. Becker, Husband

[Signature]  
Crystal G. Becker, Wife

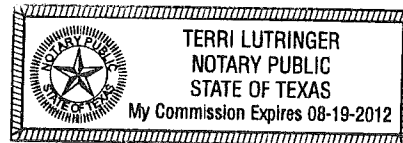
STATE OF ~~KANSAS~~ Texas )  
 ) ss:  
Wharton COUNTY )

Personally appeared before me a notary public in and for the County and State aforesaid Jamie L Becker and Crystal G Becker, husband & wife to me personally known to be the same persons who executed the foregoing instrument of writing and said persons duly acknowledged the execution thereof.

Dated at Wharton, ~~Kansas~~ <sup>Texas</sup>, this 5 day of October, 2009.

My Commission expires 8-19-12

[Signature]  
Notary Public




### TEMPORARY CONSTRUCTION EASEMENT

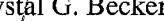
**THIS EASEMENT** made this 5 day of October, 2009, by and between Jamie L. Becker, Husband, and Crystal G. Becker, Wife, as joint tenants, (hereinafter referred to as "Grantor") and the City of Wichita, Kansas, a Municipal Corporation, (hereinafter referred to as "Grantee")

**WITNESSETH:** That the said Grantor, in consideration of one dollar and other good and valuable considerations, the receipt whereof is hereby acknowledged, do hereby grant and convey unto the Grantee a Temporary Right-Of-Way for the purpose of constructing, maintaining, and repairing utilities, over, along and under the following described real estate situated in Harvey County, Kansas, to wit:

Temporary Easement All of the West 35 feet of the East 95 feet of the following described tract; Commencing at a point 106 rods South of the Northeast corner of Section Eleven (11), Township Twenty-four (24) South, Range Three (3) West of the 6<sup>th</sup> PM, Harvey County, Kansas for a point of beginning; thence West 330 feet, thence South 330 feet; thence East 330 feet; thence North 330 feet to the point of beginning. Said easement contains 0.27 acres, more or less.

And said Grantee is hereby granted the right to enter upon said premises at any time for the purpose of constructing, operating, maintaining, and repairing such utility improvements for a period of twenty-four months from the onset of construction. This temporary easement shall expire automatically at the end of the described period.

  
\_\_\_\_\_  
Jamie L. Becker, Husband


  
Crystal G. Becker, Wife

STATE OF ~~KANSAS~~ *Texas* )  
 ) ss:  
Wharton COUNTY )

Personally appeared before me a notary public in and for the County and State aforesaid Tamie L Becker & Crystal G Becker came to me personally known to be the same persons who executed the foregoing instrument of writing and said persons duly acknowledged the execution thereof.

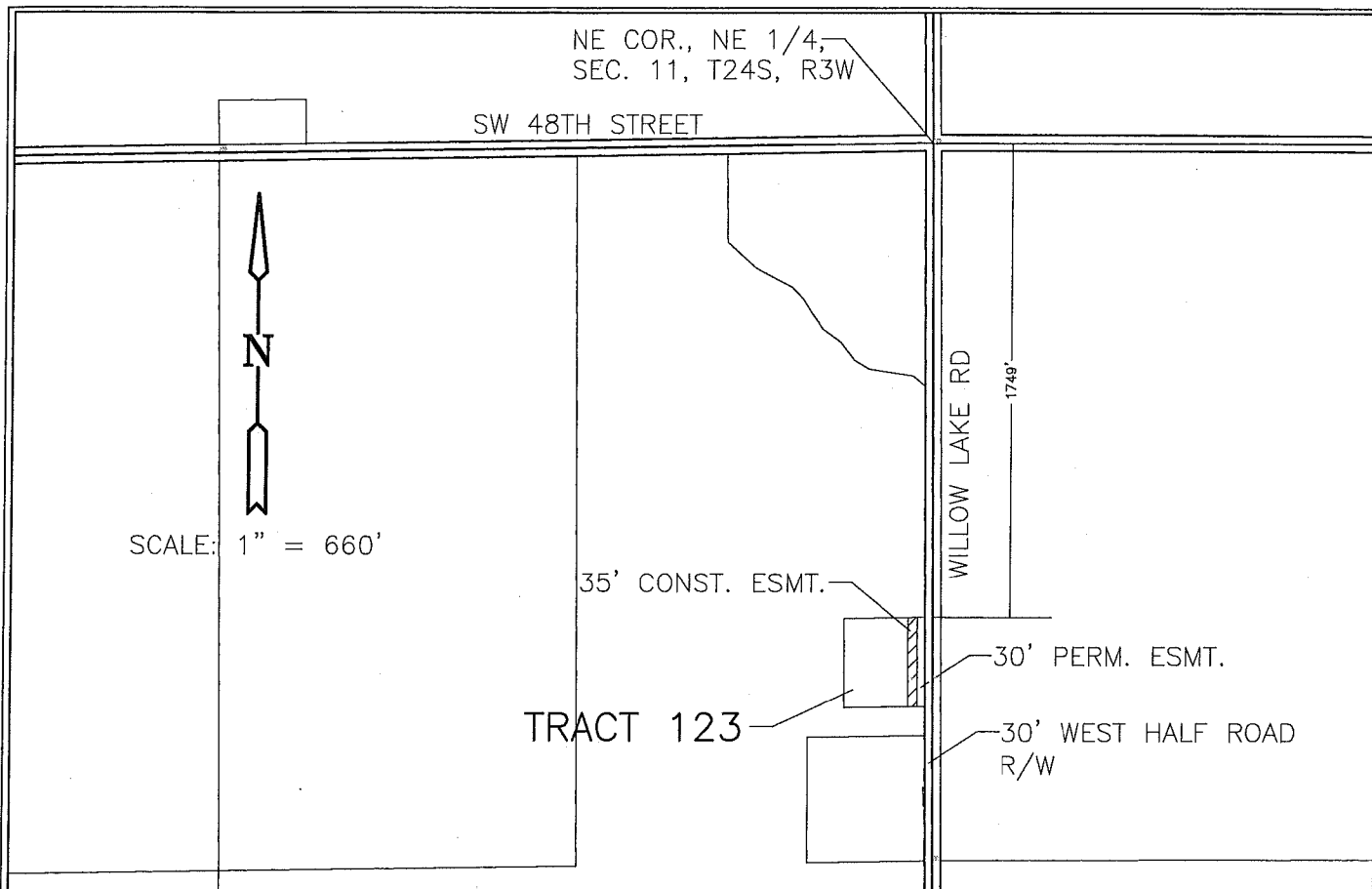
Dated at Wharton, Texas, Kansas, this 5<sup>th</sup> day of October, 2009.  
(city)

My Commission expires: 8/19/12

  
Notary Public







#### EASEMENT:

*All of the West 30 feet of the East 60 feet of the following described tract; Commencing at a point 106 rods South of the Northeast corner of Section Eleven (11), Township Twenty-four (24) South, Range Three (3) West of the 6th PM, Harvey County, Kansas for a point of beginning; thence West 330 feet, thence South 330 feet; thence East 330 feet; thence North 330 feet to the point of beginning. Said easement contains 0.23 acres, more or less.*

#### CONSTRUCTION EASEMENT:

*All of the West 35 feet of the East 95 feet of the following described tract; Commencing at a point 106 rods South of the Northeast corner of Section Eleven (11), Township Twenty-four (24) South, Range Three (3) West of the 6th PM, Harvey County, Kansas for a point of beginning; thence West 330 feet, thence South 330 feet; thence East 330 feet; thence North 330 feet to the point of beginning. Said easement contains 0.27 acres, more or less.*

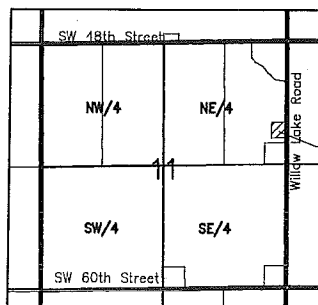
#### LEGEND:



Construction Easement



Easement



VICINITY MAP

#### OWNER:

BECKER, JAMIE L;  
BECKER, CRYSTAL G.



**CDM**  
Camp Dresser & McKee  
500 Riverway, Ste. 600  
Wichita, KS 67220  
Tel: (316) 685-4700  
consulting • engineering • construction • operations

**POE**  
POE & ASSOCIATES, INC.  
CONSULTING ENGINEERS

THIS TRACT EXHIBIT DOES NOT CONSTITUTE A BOUNDARY SURVEY PLAT

SW 72ND TRANSMISSION MAIN  
PROJECT NAME

TRACT 123  
SHEET TITLE

JGP MLT WPF  
DESIGN BY DRAWN BY: CHECKED BY:

SEPTEMBER 2009 788013 1 / 1  
DATE JOB NO. SHEET / OF

**CITY OF WICHITA**  
**City Council Meeting**  
November 17, 2009

**TO:** Mayor and City Council Members

**SUBJECT:** Partial Acquisition of land in the Southwest Quarter of Section 16, Township 24 South, Range 2 West of the 6<sup>th</sup> Principal Meridian for the Integrated Local Water Supply Plan (Harvey County)

**INITIATED BY:** Office of Property Management

**AGENDA:** Consent

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**Recommendation:** Approve the acquisition.

**Background:** On August 3, 1993, City Council approved the Water Supply Plan prepared by Burns & McDonnell/MKEC Engineering Consultants. The Plan identified cost-effective water resource projects to meet the City's future water needs. On October 10, 2000, City Council approved the projects and implementation of the plan. One portion of the Water Supply Plan is the groundwater recharge project. The groundwater recharge includes the capture of above base flow water (water which is generated from rainfall runoff above the base river flow) in the Little Arkansas River to be transferred to and stored in the aquifer. The recovery and use of this water will meet future demands for the City of Wichita. Certain sites have been identified as necessary for the capture of above base flow water, locations for water treatment facilities, recharge/recovery wells, and recharge basins. One particular site in the Southwest Quarter Section of Section 16, Township 24 South, Range 2 West of the 6<sup>th</sup> P.M. or more commonly known as being on the southwest side of Spring Lake Road and SW 72<sup>nd</sup> Street. From this site it is necessary to acquire a .89 acre pipeline easement together with a .68 acre temporary construction easement. A 5.95 acre well recharge site is also required.

**Analysis:** The subject property is in agricultural use. There are no improvements impacted by the project however, some mature trees which be removed. The proposed well recharge site requires an acquisition of all of the rights of that portion of the property while the easements are only a partial interest. The well site consists of 5.95 acres and at \$2,555 an acre, it was valued at \$15,202. The .89 acre pipeline easement was valued at \$1,137, or \$1,278 an acre. The temporary construction easement was valued at \$347, or \$511 an acre. \$1,000 was offered as compensation for the loss of mature trees. The easement values include crop damages. The total offer of \$17,686 was accepted by the property owners.

**Financial Considerations:** A budget of \$18,936 is requested. The budget request includes \$17,686 for the acquisition, \$1,250 for title work, title insurance, closing costs, recording fees and administrative fees. Funding for this project is included in the Capital Improvement Plan (CIP) in W-549, Water Supply Plan Phase III, which has an available funding of over \$7.6 million.

**Goal Impact:** The acquisition of this parcel is necessary to ensure efficient infrastructure.

**Legal Considerations:** The Law Department has approved the contracts and easements as to form.

**Recommendation/Action:** It is recommended that the City Council approve the agreements and authorize the necessary signatures.

**Attachments:** Real estate purchase agreements, tract maps and aerial.

## REAL ESTATE PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2009 by and between Floyd Friesen, a single person, undivided 50% interest, Galen F. & Marla Friesen, husband & wife, Vickie J. & Lynn Koehn, wife & husband, Jerry L. & Verla Friesen, husband & wife, Russell J. & Charlene Friesen, husband & wife, Bonita K. & Marlin Schmidt, wife & husband, having 1/5", undivided 50% interest, party of the First Part, hereinafter referred to as "Seller," whether one or more, and City of Wichita, KS, a Municipal Corporation, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer by a good and sufficient Statutory Warranty Deed of the following described real property, situated in Harvey County, Kansas, to wit:

Described as: (Parcel "A")The South 370 Feet of East 700 Feet of the west half of the SW ¼ of Sec. 16, T24 S, R2W, including existing road right of way.  
Said tract contains 5.95 acres more or less.

2. The Buyer hereby agrees to purchase and pay to the Seller the sum of Fifteen Thousand Two Hundred Two Dollars and No Cents (\$15,202.00) in the manner following, to-wit: cash at closing, which sum the Seller agrees is adequate compensation for such conveyance to Buyer of the above described real property, any and all damages including but not limited to severance, crops exceeding current crop, drainage and fencing.

3. A complete abstract of title certified to date, or a title insurance company's commitment to insure, to the above described real property, showing a merchantable title vested in the Seller, subject to easements and restrictions of record is required. The Title Evidence shall be sent to Property Management Division for examination by the Buyer as promptly and expeditiously as possible, and it is understood and agreed that the Seller shall have a reasonable time after said Title Evidence has been examined in which to correct any defects in title.

4. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.

5. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before September 30, 2009.

6. The Seller further agrees to convey the above described premises with all the improvements located thereon and deliver possession of the same in the same condition as they are now, reasonable wear and tear excepted.

7. Possession to be given to Buyer on date of closing.

8. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid 0% by Seller and 100% by

construction are to be addressed by filing a claim with the Buyer, City of Wichita, Kansas, City Clerk's Office. 455 North Main, Wichita, KS 67202. (316)268-4529.

10. Site Assessment

A. At any time prior to closing of this Agreement, the buyer shall have the right to conduct or cause to be conducted an environmental site assessment and/or testing on the property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the property, the Buyer shall have the right to void this agreement upon notice to the Seller, in which event neither party shall be under any further obligation to the other, with the exception that Seller shall return to Buyer any deposit made hereunder.

B. The Buyer or its agents shall have the right, without the obligation, to enter upon the property prior to closing to undertake an environmental site assessment or any other inspection of the property at the Buyer's sole expense.

C. Provided, however, Buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to this paragraph. If a site assessment cannot be completed prior to the closing date set herein, then the Buyer and Seller shall, unless Buyer chooses to void this agreement, close within ten (10) days of the completion of such site assessment. The Buyer shall, if Buyer determines that a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment.

11. Buyer agrees to indemnify and hold harmless Seller from any and all claims for personal injury and/or property damage resulting from any and all claims, expenses, suits or other costs relating to Buyer's occupancy of the subject property prior to closing. Buyer's occupancy of the subject property prior to closing shall be completely at the risk of Buyer and Seller shall bear no responsibility whatsoever for the actions of Buyer and/or its contractors or subcontractors for matters related to such occupancy.

12. Paragraphs 9 and 11 shall survive the closing.

**WITNESS OUR HANDS AND SEALS** the day and year first above written.

**SELLER:**

Floyd Friesen  
Floyd Friesen, single person

**BUYER:**

Carl Brewer, Mayor

**ATTEST:**

Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

Gary E. Rebenstorf, Director of Law

## EASEMENT PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2009 by and between Floyd Friesen, a single person, undivided 50% interest, Galen F. & Marla Friesen, husband & wife, Vickie J. & Lynn Koehn, wife & husband, Jerry L. & Verla Friesen, husband & wife, Russell J. & Charlene Friesen, husband & wife, Bonita K. & Marlin Schmidt, wife & husband, having 1/5", undivided 50% interest, party of the First Part, hereinafter referred to as "Seller," whether one or more, and City of Wichita, KS, a Municipal Corporation, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer by a good and sufficient Permanent Easement and/or Temporary Construction Easement of the following described real property, situated in Harvey County, Kansas, to wit:

Described as:

Permanent Easement (Pipeline – Parcel "B") The North 66 feet of the South 96 feet of the west half of the Southwest quarter of Section 16, Township 24 South, Range 2 West in Harvey County, Kansas, except for the East 700 feet and the West 25 feet thereof. Said tract contains 0.89 acres more or less.

Temporary Construction Easement (Parcel "C") The North 50 feet of the South 146 feet of the West half of the Southwest quarter of Section 16, Township 24 South, Range 2 West, except for the East 700 feet and the West 25 feet thereof. Said tract contains 0.68 acres more or less.

2. The Buyer hereby agrees to purchase and pay to the Seller the sum of Two Thousand Four Hundred Eighty-Four Dollars and No Cents (\$2,484.00) in the manner following, to-wit: cash at closing, which sum the Seller agrees is adequate compensation for such conveyance to Buyer of the above described real property, a temporary construction easement, any and all damages including but not limited to severance, crops at time of construction, crops for one year after initiation of construction, drainage and fencing.

3. A complete abstract of title certified to date, or a title insurance company's commitment to insure, to the above described real property, showing a merchantable title vested in the Seller, subject to easements and restrictions of record is required. The Title Evidence shall be sent to Property Management Division for examination by the Buyer as promptly and expeditiously as possible, and it is understood and agreed that the Seller shall have a reasonable time after said Title Evidence has been examined in which to correct any defects in title.

4. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.

5. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before September 25, 2009.

endanger the construction, operations and maintenance of Buyer's improvements.

7. Possession to be given to Buyer on date of closing.

8. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid 0% by Seller and 100% by Buyer. Buyer will pay 100% closing costs.

9. In the event there are crop damages outside the easement area during construction or, crop damages resulting from the Buyer's other maintenance, operation, replacement or repairs to the pipeline, the Seller hereby agrees to file a claim with the City of Wichita, KS, City Clerk's Office, 455 North Main, Wichita, KS 67202, (316)268-4529.

10. Buyer and Seller hereby agree that Buyer, contractors and assigns will remove, store and reinstall topsoil removed from the easement corridor as a result of construction. Said topsoil, separate from bedding soil, will be temporarily stored within a temporary construction easement.

11. Buyer hereby agrees that the finished grade will match the existing grade as it currently exists upon completion of the project.

12. Site Assessment

A. At any time prior to closing of this Agreement, the buyer shall have the right to conduct or cause to be conducted an environmental site assessment and/or testing on the property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the property, the Buyer shall have the right to void this agreement upon notice to the Seller, in which event neither party shall be under any further obligation to the other, with the exception that Seller shall return to Buyer any deposit made hereunder.

B. The Buyer or its agents shall have the right, without the obligation, to enter upon the property prior to closing to undertake an environmental site assessment or any other inspection of the property at the Buyer's sole expense.

C. Provided, however, Buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to this paragraph. If a site assessment cannot be completed prior to the closing date set herein, then the Buyer and Seller shall, unless Buyer chooses to void this agreement, close within ten (10) days of the completion of such site assessment. The Buyer shall, if Buyer determines that a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment.

13. Buyer agrees to indemnify and hold harmless Seller from any and all claims for personal injury and/or property damage resulting from any and all claims, expenses, suits or other costs relating to Buyer's occupancy of the subject property prior to closing. Buyer's occupancy of the subject property prior to execution shall be completely at the risk of Buyer and Seller shall bear no responsibility whatsoever for the actions of Buyer and/or its contractors or subcontractors for matters related to such occupancy.

14. Paragraphs 6, 9-11 and 13 shall survive the closing.

**WITNESS OUR HANDS AND SEALS** the day and year first above written.

**SELLER:**

Floyd Friesen  
Floyd Friesen, single person

**BUYER:**

Carl Brewer, Mayor

**ATTEST:**

Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

Gary E. Rebenstorf, Director of Law



### PIPELINE EASEMENT

**THIS EASEMENT** made this 9 day of September, 2009 by Floyd Friesen, a single person, undivided 50% interest, Galen F. & Marla Friesen, husband & wife, Vickie J. & Lynn Koehn, wife & husband, Jerry L. & Verla Friesen, husband & wife, Russell J. & Charlene Friesen, husband & wife, Bonita K. & Marlin Schmidt, wife & husband, having 1/5", undivided 50% interest "Grantor" and The City of Wichita, Kansas, a Municipal Corporation, "Grantee".

**WITNESSETH:** That Grantor, in consideration of the sum of One Dollar and No Cents (\$1.00) and other valuable considerations, the receipt whereof is hereby acknowledged, does hereby grant and convey unto Grantee a perpetual easement for the purpose of constructing, operating, maintaining, inspecting and repairing a pipeline for the transmission of water and other equipment which the Grantee shall deem necessary under the following described real estate situated in Harvey County, Kansas, to wit:

Permanent Easement (Pipeline – Parcel "B") The North 66 feet of the South 96 feet of the west half of the Southwest quarter of Section 16, Township 24 South, Range 2 West in Harvey County, Kansas, except for the East 700 feet and the West 25 feet thereof. Said tract contains 0.89 acres more or less.

This easement is for the installation and maintenance of underground utilities and associated appurtenances. Grantee shall not disturb or alter the surface of the property after the completion of the installation of any utilities installed hereunder without first obtaining the written consent of the Grantor, its heirs and assigns.

The amenities installed hereunder shall remain the property of Grantee, and Grantee shall have the right to inspect, rebuild, remove, repair, improve and make alterations to its facilities as it may from time to time deem advisable.

Grantor, his successors and assigns, may use the land within the easement for any purpose not inconsistent with the rights hereby granted, provided such use does not interfere with or endanger the construction, operations and maintenance of Grantee's facilities.

Grantee shall in no way interfere with the Grantors use and enjoyment of the surface of the property.

For the purpose of constructing, inspecting, maintaining or operating its facilities, Grantee shall have the right of ingress and egress from the easement over the lands of Grantor adjacent to said easement and lying between public or private roads. Grantee shall exercise said right in practicable manner

Grantee shall not interfere with the ingress and egress of the Grantor, his heirs and assigns. Should it become necessary to relocate the facilities of the Grantee to aid in the future development of the subject property, Grantee hereby agrees to cooperate with Grantor in relocating said facilities. However, Grantor shall reimburse Grantee for the actual cost of relocating said facilities.

**IN WITNESS WHEREOF:** Grantor has signed these presents the day and year first written.

Floyd Friesen  
Floyd Friesen, a single person

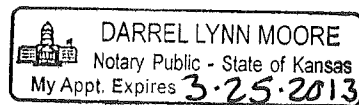
STATE OF KANSAS            )  
                                          ) ss:  
Harvey COUNTY        )

Personally appeared before me a notary public in and for the County and State aforesaid Floyd Friesen, single person to me personally known to be the same person who executed the foregoing instrument of writing and said person duly acknowledged the execution thereof.

Dated at Halstead, Kansas, this 9th day of September 2009.

Darrel Lynn Moore  
Notary Public

My Commission expires 3.25.2013



## TEMPORARY CONSTRUCTION EASEMENT

**THIS EASEMENT** made this 9 day of September, 2009, by and between Floyd Friesen, a single person, undivided 50% interest, Galen F. & Marla Friesen, husband & wife, Vickie J. & Lynn Koehn, wife & husband, Jerry L. & Verla Friesen, husband & wife, Russell J. & Charlene Friesen, husband & wife, Bonita K. & Marlin Schmidt, wife & husband, having 1/5", undivided 50% interest (hereinafter referred to as "Grantor") and the City of Wichita, Kansas, a Municipal Corporation, (hereinafter referred to as "Grantee")

**WITNESSETH:** That the said Grantor, in consideration of the sum of One Dollar (\$1.00) and other valuable considerations, the receipt whereof is hereby acknowledged, does hereby grant and convey unto the Grantee a Temporary Right-Of-Way for the purpose of constructing, maintaining, and repairing utilities, over, along and under the following described real estate situated in Harvey County, Kansas, to wit:

Temporary Construction Easement (Parcel "C") The North 50 feet of the South 146 feet of the West half of the Southwest quarter of Section 16, Township 24 South, Range 2 West, except for the East 700 feet and the West 25 feet thereof. Said tract contains 0.68 acres more or less.

And said Grantee is hereby granted the right to enter upon said premises at any time for the purpose of constructing, operating, maintaining, and repairing such utility improvements for a period of twenty-four months from the onset of construction. This temporary easement shall expire automatically at the end of the described period.

**IN WITNESS WHEREOF:** The said Grantor have signed these presents the day and year first written.

Floyd Friesen  
Floyd Friesen, a single person

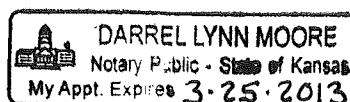
STATE OF KANSAS            )  
                                      ) ss:  
Harvey COUNTY        )

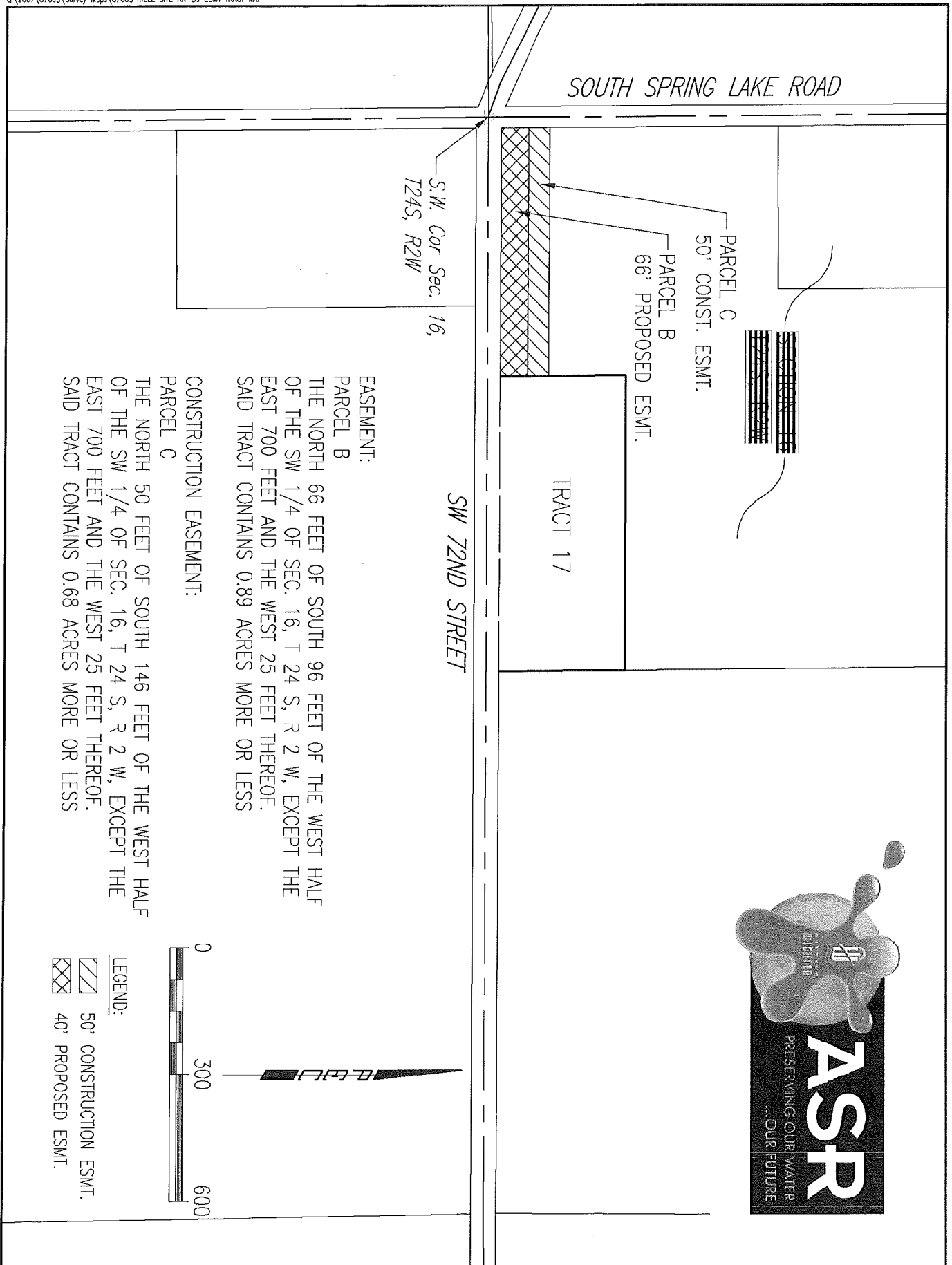
Personally appeared before me a notary public in and for the County and State aforesaid Floyd Friesen, Single Person came to me personally known to be the same persons who executed the foregoing instrument of writing and said persons duly acknowledged the execution thereof.

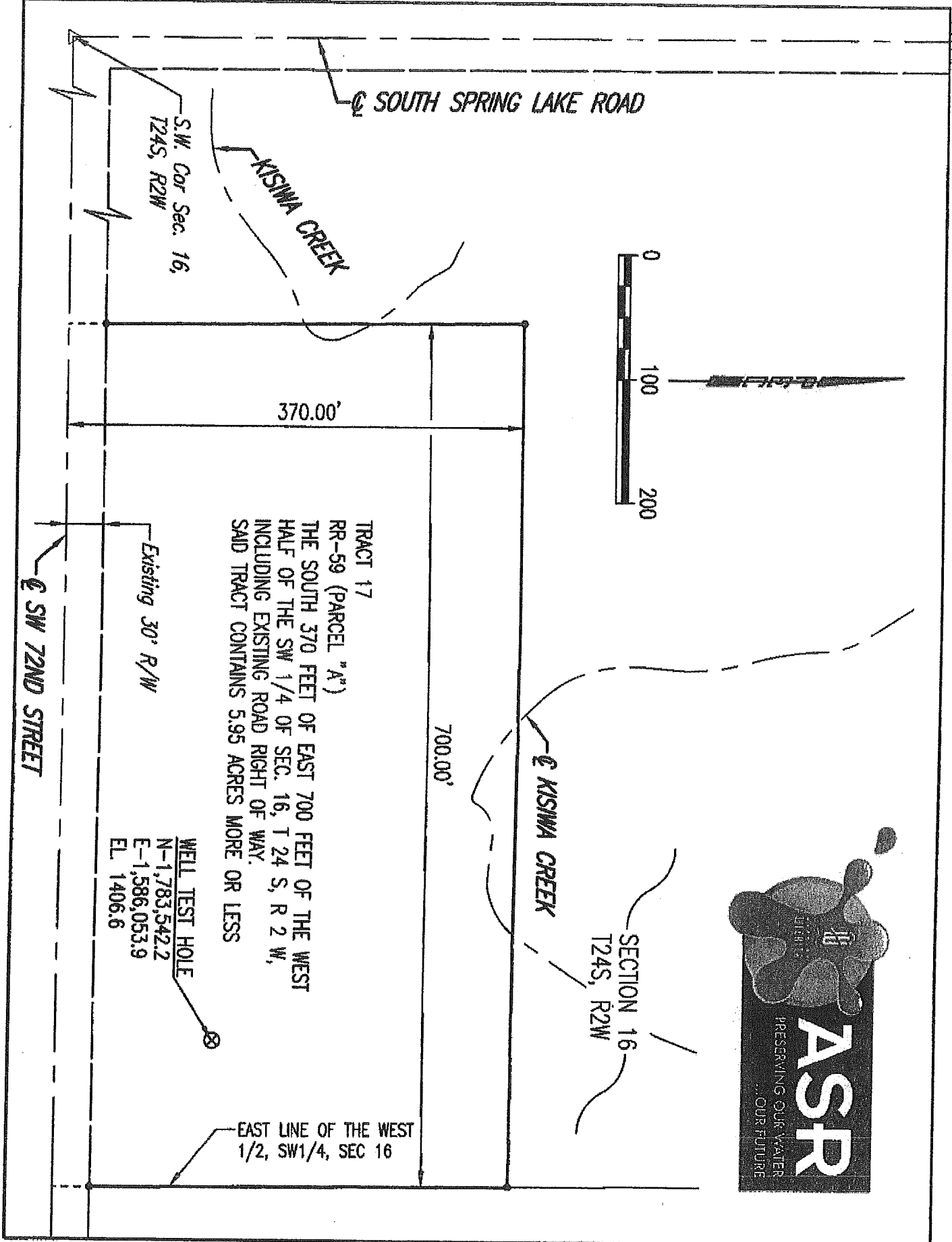
Dated at Halstead, Kansas, this 9<sup>th</sup> day of September,  
2009.  
(city)

My Commission expires: 3.25.2013

Darrel Lynn Moore  
Notary Public



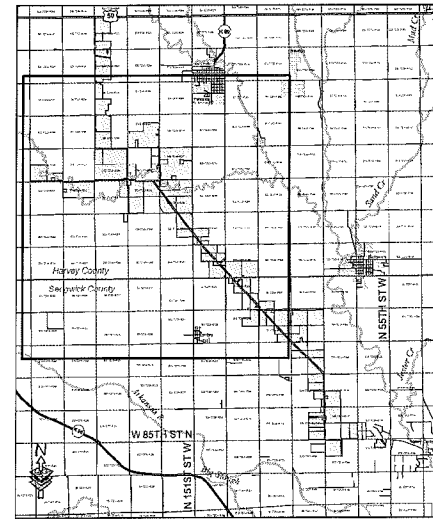
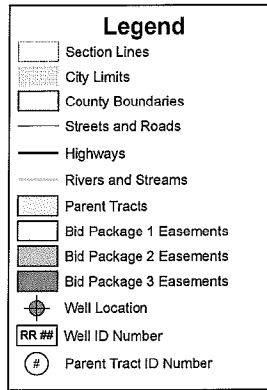




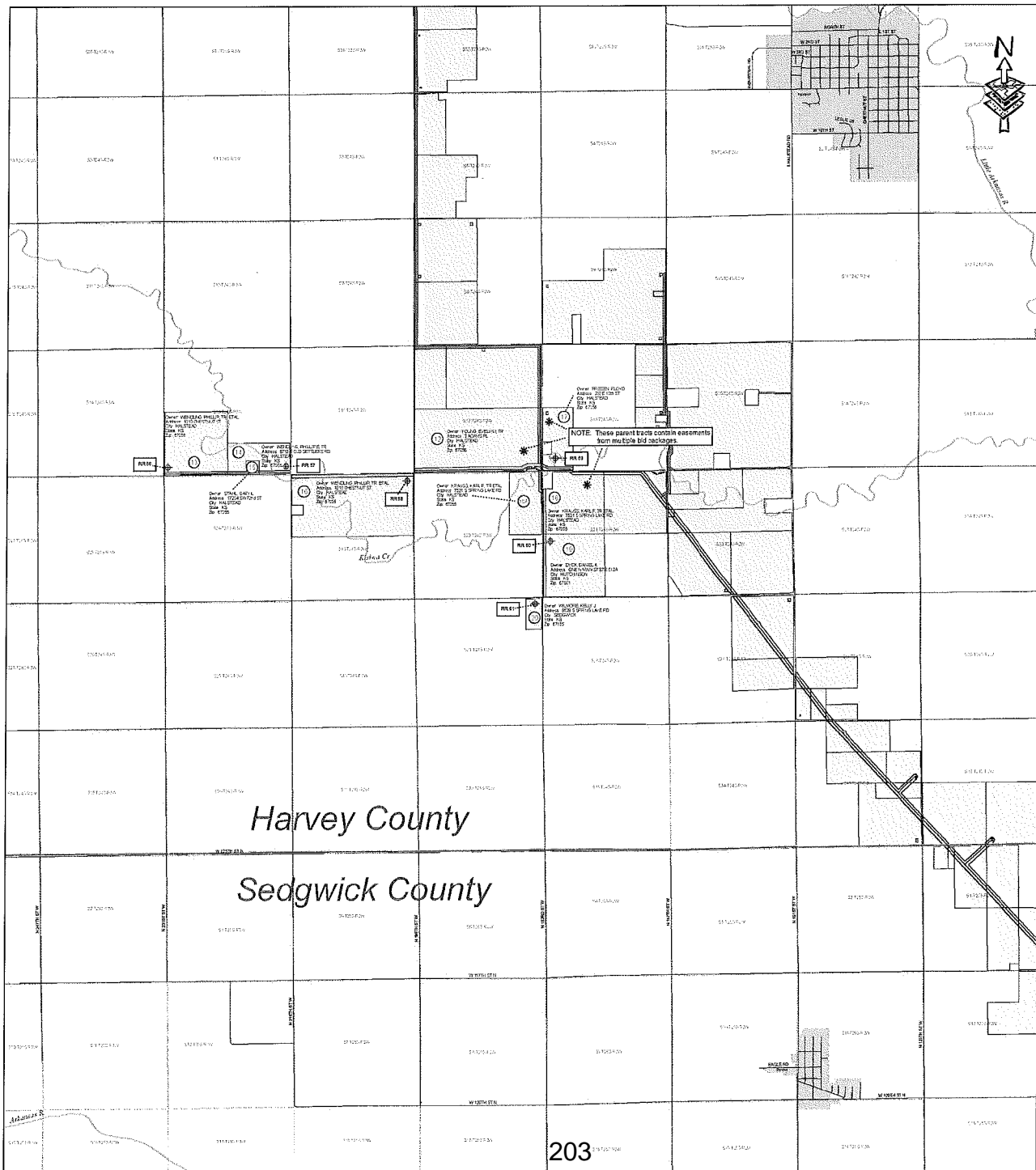


# BID PACKAGE 2

## Property Acquisition Map



Q:\2007\07665\Brent\Project GIS\ASR Bid Package2 Easements.mxd  
 Last saved 2/2/2009 by SAD  
 NAD\_1983\_StatePlane\_Kansas\_South\_FIPS\_1502\_Feet  
 Projection: Lambert\_Conformal\_Conic  
 Professional Engineering Consultants, P.A.  
 303 S. Topeka  
 Wichita, KS 67202  
 Ph: (316) 262-2601  
 © 2008 Professional Engineering Consultants, P.A.



**CITY OF WICHITA**  
**City Council Meeting**  
November 17, 2009

**TO:** Mayor and City Council Members

**SUBJECT:** Partial Acquisition of 1510 South Greenwich for the Greenwich: Harry to Kellogg Improvement Project (District II)

**INITIATED BY:** Office of Property Management

**AGENDA:** Consent

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**Recommendation:** Approve the acquisition.

**Background:** Greenwich will be widened from two lanes to five lanes. There will be four lanes of traffic and a center two-way turn lane. Landscaped medians will also be constructed throughout the corridor. The intersection of Harry and Greenwich will be reconstructed with left turn lanes at all four approaches of the intersection. Ditches will be replaced with a storm water sewer system and sidewalks will be built along both the east and west side of Greenwich. The subject property is located at the northeast corner of Greenwich and Harry and has 76.8 acres and is improved with three single-family residences and several farm buildings. Approximately 8.25 acres at the corner is zoned commercial with the balance of the property zoned residential. The project requires three acquisitions from the property. A 20 foot strip totaling 19,000 square feet is required along Harry and two drainage easements, 2,000 square feet and 1,960 square feet are required. A 14,810 square foot temporary easement is also required. The project will not impact the improvements.

**Analysis:** The acquisition was appraised at \$21,072 consisting of \$20,000 (\$.87 per square foot) for the right of way and \$1,072 (\$.07 per square foot) for the temporary easement. This amount was rejected by the property owner. The owner has the property listed for sale at \$5.50 per square foot and felt that the offer did not take the zoning on the corner into account. Similarly zoned property was valued at \$3.00 to \$4.00 per square foot in the project. The owner has accepted \$62,816 which consists of \$57,400 (\$2.50 per square foot) for the acquisitions and \$5,416 (\$.36 per square foot) for the temporary easement.

**Financial Considerations:** The funding sources for the project are General Obligation Bonds and Federal Grants. A budget of \$63,316 is requested. This includes \$62,816 for the acquisition and \$500 for closing costs and title insurance.

**Goal Impact:** The acquisition of this parcel is necessary to ensure efficient infrastructure of roads and storm water drainage through a developed part of the City.

**Legal Considerations:** The Law Department has approved the contract as to form.

**Recommendations/Actions:** It is recommended that the City Council; 1) Approve the Budget; 2) Accept the easements and 3) Authorize the payment.

**Attachments:** Tract maps and real estate purchase agreement.



## REAL ESTATE PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this 21 day of October, 2009 by and between Donald E. Pray and Beatrice J. Pray, co-trustees of the Donald E. and Beatrice J. Pray Joint Trust, as to an undivided one-half interest and Ira E. Pray as trustee of the Ira E. Pray Revocable Living Trust dated November 7, 2003, as to an undivided one-half interest, parties of the First Part, hereinafter referred to as "Seller," whether one or more, and the City of Wichita, Kansas, a municipal corporation, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

**WITNESSETH:** That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer by a good and sufficient warranty deed the following described real property, situated in Sedgewick County, Kansas, to-wit:

A tract in the SW 1/4 Section 27, Township 27 South, Range 2 East of the 6th Principal Meridian, Sedgewick County, Kansas, described as: commencing at the SW corner of said SW 1/4; thence on an assumed bearing of N 00°-49'-21" W a distance of 87.69 feet to a point on the West line of said SW 1/4; thence N 89°-10'-42" E a distance of 50.00 feet to the point of beginning; thence S 45°-11'-40" E a distance of 38.81 feet; thence N 89°-13'-01" E a distance of 922.90 feet; thence S 00°-46'-59" E a distance of 20.00 feet; thence S 89°-13'-01" W a distance of 950.03 feet; thence N 00°-49'-22" W a distance of 47.72 feet, more or less, to the point of beginning, and

A tract in the SW 1/4 Section 27, Township 27 South, Range 2 East of the 6th Principal Meridian, Sedgewick County, Kansas, described as: commencing at the SW corner of said SW 1/4; thence on an assumed bearing of N 00°-49'-21" W a distance of 1265.00 feet to a point on the West line of said SW 1/4; thence N 89°-10'-39" E a distance of 50.00 feet to the point of beginning; thence S 00°-49'-21" E a distance of 100.00 feet; thence N 89°-10'-39" E a distance of 40.00 feet; thence N 00°-49'-21" W a distance of 100.00 feet; thence S 89°-10'-39" W a distance of 40.00 feet, more or less, to the point of beginning, and

That part of the SW 1/4 of Section 27 South, Range 2 East of the 6th Principal Meridian, Sedgewick County, Kansas described as beginning at the southwest corner of said SW 1/4; thence East along the south line of said SW 1/4, 1,890.98; thence North perpendicular to said south line, 40.00 feet to the place of beginning; thence continuing North perpendicular to said south line, 35.00 feet; thence East, parallel with said south line, 56.00 feet; thence South, perpendicular to said south line, 35.00 feet; thence West, parallel with said south line, 56.00 feet to the place of beginning.

And

The Seller does hereby agree to convey to the Buyer by a temporary construction easement, during construction, for the following described real property, situated in Sedgewick County, Kansas, to-wit:

A tract described as: the East 15.00 feet of the West 65.00 feet of the North 62.20 feet of the S½, SW¼, Section 27, T-27-S, R-2-E of the 6<sup>th</sup> Principal Meridian, Sedgwick County, Kansas, and commencing at the SW corner of said S½; thence on an assumed bearing of N 00°-49'-21" W a distance of 1165.00 feet to a point on the West line of said S½; thence N 89°-10' 39" E a distance of 50.00 feet to the point of beginning; thence S½; thence N 89°-10' 39" E a distance of 15.00 feet; thence S 00°-49'-22" E a distance of 300.00 feet; thence S 89°-10'-39" W a distance of 10.00 feet; thence S 00°-49'-22" E a distance of 775.27 feet; thence S 45°-11'-40" E a distance of 34.67 feet; thence N 89°-13'-01" E a distance of 135.67 feet; thence N 00°-46'-59" W a distance of 19.00 feet; thence N 89°-13'-01" E a distance of 30.00 feet; thence S 00°-46'-59" E a distance of 19.00 feet; thence N 89°-13'-01" E a distance of 755.13 feet; thence S 00°-46'-59" E a distance of 5.00 feet; thence N 89°-13'-01" E a distance of 922.90 feet; thence N 45°-11'-40" W a distance of 38.81 feet; thence 00°-49'-21" W a distance of 1077.31 feet more less, to the point of beginning.

2. The Buyer hereby agrees to purchase, and pay to the Seller, as consideration for the conveyance to him of the above-described real property, the sum of Sixty-two Thousand Eight Hundred Sixteen Dollars and Zero Cents (\$62,816.00) in the manner following to-wit: cash at closing

3. A title insurance company's commitment to insure or a complete abstract of title certified to date, to the above described real property, showing a merchantable title vested in the seller, subject to easements and restrictions of record is required. The Title Evidence shall be sent to the Office of Property Management for the City of Wichita for examination by the Buyer as promptly and expeditiously as possible, and it is understood and agreed that the Seller shall have a reasonable time, but not to exceed thirty (30) days after said Title Evidence has been examined in which to correct any defects in title. If defects in title are not corrected to Buyer's satisfaction, Buyer, at Buyer's option, may cancel this contract. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid 0% by Seller and 100% by Buyer.

4. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.

5. It is further agreed by and between the parties hereto that all rentals, insurance (if policies acceptable to Buyer), and interest, if any shall be adjusted and prorated as of the closing date. Taxes and specials shall be prorated for calendar year on the basis of 100% of taxes levied for the prior year. All prior years specials and taxes shall be current at time of closing.

6. The Seller further agrees to convey the above-described premises with all the improvements located thereon and deliver possession of the same in the same condition as they now are, reasonable wear and tear excepted.

7. Seller shall place no encumbrances on the property during the period from execution of this contract to closing. In addition, Seller shall be responsible for carrying such insurance as is reasonable on the improvements up until the closing date.

8. It is understood and agreed between the parties hereto that time is of the essence of this

contract, and that this transaction shall be consummated on or before November 30, 2009 subject to the conditions of Item 11 below.

9. Possession to be given to Buyer at closing
10. Closing costs shall be paid 100% by Buyer and 0% by Seller.
11. Site Assessment

A. At any time prior to the closing of this agreement, Buyer shall have the right to conduct or cause to be conducted an environmental site assessment and/or testing on the property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by Federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the property, Buyer shall have the right to void this agreement upon notice to Seller, in which event neither party shall be under any further obligation to the other, with the exception that Seller shall return to Buyer any deposit made hereunder.

B. Provided, however, Buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to Paragraph A above. If a site assessment is completed after the closing date set herein, then Buyer and Seller shall close or Buyer shall advise Seller that this agreement is being voided pursuant to said paragraph within ten (10) days of the completion of the site assessment. Buyer shall, if Buyer determines a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment after this agreement is executed by all parties.

WITNESS OUR HANDS AND SEALS the day and year first above written.

SELLER:

Donald E. and Beatrice J. Pray Joint Trust

Donald E. Pray Co-trustee

Ira E. Pray, Revocable Living Trust

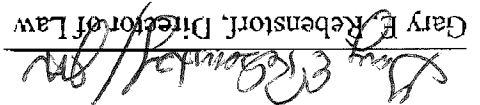
Ira E. Pray, Trustee

BUYER

City of Wichita

By Direction of the City Council

Carl Brewer, Mayor

  
Gary E. Rebenstorff, Director of Law

APPROVED AS TO FORM:

\_\_\_\_\_  
Karen Sublett, City Clerk

ATTEST:

# POWER OF ATTORNEY

I, DONALD E. PRAY, do hereby make, constitute, and appoint DONALD K. PRAY as my agent and attorney-in-fact. In the event he is unable, unwilling or declines to act for me, I name JENNY L. DENZER and JANET L. HOUK, as co-successor agent and attorney-in-fact, with power and authority. If either of them declines to serve, fails to qualify, or ceases to act, then the other shall be the sole successor agent and attorney-in-fact, with power and authority.

1. To take possession of, manage, administer, operate, maintain, improve, and control all my property, real or personal, to insure and keep the same insured and to pay any and all taxes, charges, and assessments that may be levied or imposed upon any such property. In dealing with real property, my agent may not receive any compensation that would require my agent to be licensed under ORS, Chapter 696 or other applicable law.
2. To collect and receive any money, property, debts, or claims whatsoever, as are now or shall hereafter become due, owing, and payable or belonging to me, or to forgive and discharge any of the same.

3. To make expenditures for my care, maintenance, support, and general welfare, and to distribute such sums as are necessary for the care, support, and maintenance of members of my family who are dependent upon me for support.
4. To retain any property which comes into the possession of my attorney-in-fact in the form in which it was received and to make investments and changes of investments in such securities, including common and preferred stocks of corporations, or other property, real or personal, as my attorney-in-fact may deem prudent.

MERRILL O'SULLIVAN, LLP

ATTORNEYS AT LAW  
805 SW INDUSTRIAL WAY, SUITE 6  
BEND, OR 97702

Power of Attorney  
Donald E. Pray

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5. To pay my debts and other obligations.
6. To sue upon, defend, compromise, submit to arbitration, or adjust any controversies in which I may be interested, and to act in my name in any complaints, proceedings, or suits with all the powers I would possess if personally present and under no legal disability.

7. To bargain for, buy, and deal in property and goods of every description.
8. To convey, grant, sell, mortgage, pledge, consign, lease, hypothecate, and in any and every manner deal in and with my property, both real and personal.

9. To advance my said attorney-in-fact's own funds on my behalf and to borrow any sums of money on such terms and at such rates of interest as to my said attorney-in-fact may seem proper and to give security for the repayment of the same.

10. To make and deliver any deeds, conveyances, contracts, covenants, and other instruments, undertakings, or agreements, either orally or in writing, of whatever kind and nature, including the right to supply the legal description of any real property involved in any of the foregoing documents, which my said attorney-in-fact in my attorney-in-facts discretion shall deem to be for my best interests.

11. To sign, endorse, sell, discount, deliver, and/or deposit checks, drafts, notes, and negotiable or nonnegotiable instruments, including any payments to me drawn on the Treasury of the United States or the State of Oregon or any other state or governmental entity, and to accept drafts.
12. To appear and vote for me in person or as my proxy at any corporate or other meeting.

Power of Attorney  
Donald E. Pray

MERRILL O'SULLIVAN, LLP  
ATTORNEYS AT LAW  
805 SW INDUSTRIAL WAY, SUITE 5  
BEND, OR 97702

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13. To have access to any safe deposit box which has been rented in my name, or in the name of myself and any other person or persons.

14. To do and perform every act necessary or desirable and to serve as representative payee with respect to rights and entitlement for my benefit and the benefit of my spouse from Social Security, Medicare, and military service.

15. To make investments and changes of investments in such income bearing securities, including common and preferred stocks of corporations, or other property, real or personal, as my said attorney-in-fact in its discretion may deem prudent, and to hold my securities in the name of its nominee or unregistered in such form that transfer thereof may be effected by delivery.

16. To withdraw any monies deposited with any bank, mutual savings bank, credit union, savings and loan association, mutual fund, money market account, investment advisor, or broker in my name or in the name of myself and any other person or persons and generally to do any business with any such financial institution or agency on my behalf.

17. To appoint and substitute any agents or attorneys-in-fact for any or all of the purposes stated herein, and to revoke their authority.

18. To sign tax returns on my behalf, and to represent me, or obtain representation for me, at any proceeding involving taxing authorities, including any tax audit or collection action.

19. To act on my behalf in dealing with my pension and retirement plans, including the power to make IRA contributions, IRA roll overs, voluntary contributions, borrow from any retirement plan, elect or select pay out options, and take any other steps

Power of Attorney  
Donald E. Pray

MERRILL O'SULLIVAN, LLP  
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805 SW INDUSTRIAL WAY, SUITE 5  
BEND, OR 97702

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which I might take on my own behalf with regard to my retirement and/or IRA/pension plans.

20. To redirect my mail.

21. To cancel or continue my credit cards and/or any credit or charge accounts.

22. To take custody of my Will, deeds, life insurance policies, contracts, securities, or other important papers.

23. To reform any estate planning documents, other than Wills, if they prove to be defective after incompetency.

24. To make any decisions which the holder of the power may, in his or her own discretion, determine necessary for disposing of or transferring my property in order to effect the best result possible for my entitlement to public services or benefits.

25. To annually gift to my spouse, or any of my lineal descendants (whether then acting as attorney-in-fact or not, as I authorize self-dealing in this instance), in such portions as my attorney-in-fact may deem proper, any real or personal property, whether tangible or intangible, of which I may now or hereby may be possessed or in which I own any right, title, or interest, up to the maximum amount that can be given to a donee each year, provided, however, that such gift be of a present interest so that the gift qualifies for the federal annual gift tax exclusion. Further, my attorney-in-fact may consent to the treatment of gifts made by me or my spouse as gifts made one-half by each of us.

I authorize my said attorney-in-fact for me and in my name generally to do and perform all and every act and thing whatsoever requisite, desirable, or necessary to be done in the premises, to conduct, manage, and control all my business and my property, wheresoever situated and whether now owned or hereafter acquired, as my attorney-in-fact

MERRILL O'SULLIVAN, LLP

ATTORNEYS AT LAW  
805 SW INDUSTRIAL WAY, SUITE 5  
BEND, OR 97702

Power of Attorney  
Donald E. Pray

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may deem for my best interests, and to execute and acknowledge any and all instruments necessary or proper to carry out the foregoing powers, hereby releasing and saving harmless all third persons from responsibility for the acts and omissions of my said attorney-in-fact and empowering my said attorney-in-fact to indemnify all such persons against loss, expense, and liability. Third persons may rely upon the continued validity of this Power of Attorney until receiving actual knowledge of its revocation.

I expressly declare that I am familiar with the provisions of ORS 127.005 and that the powers of my attorney-in-fact herein-described shall be exercisable by my said attorney-in-fact on my behalf notwithstanding that I may become legally disabled or incompetent.

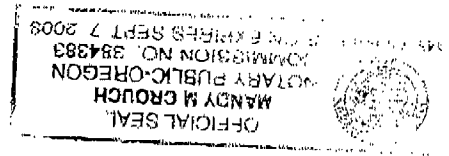
All questions pertaining to validity, interpretation, and administration of this power shall be determined in accordance with the laws of Oregon.

DATED this 15<sup>th</sup> day of January, 2008.

Donald E. Pray  
DONALD E. PRAY

STATE OF OREGON )  
) ss. )  
County of Deschutes )

Personally appeared before me the above-named DONALD E. PRAY this 15<sup>th</sup> day of January, 2008, and acknowledged the foregoing instrument to be his voluntary act and deed.



MERRILL O'SULLIVAN, LLP

ATTORNEYS AT LAW  
805 SW INDUSTRIAL WAY, SUITE 6  
BEND, OR 97702

## POWER OF ATTORNEY

I, BEATRICE J. PRAY, do hereby make, constitute, and appoint DONALD K. PRAY as my agent and attorney-in-fact. In the event he is unable, unwilling or declines to act for me, I name JENNY L. DENZER and JANET L. HOUK, as co-successor agent and attorney-in-fact, with power and authority. If either of them declines to serve, fails to qualify, or ceases to act, then the other shall be the sole successor agent and attorney-in-fact, with power and authority.

1. To take possession of, manage, administer, operate, maintain, improve, and control all my property, real or personal, to insure and keep the same insured and to pay any and all taxes, charges, and assessments that may be levied or imposed upon any such property. In dealing with real property, my agent may not receive any compensation that would require my agent to be licensed under ORS, Chapter 696 or other applicable law.

2. To collect and receive any money, property, debts, or claims whatsoever, as are now or shall hereafter become due, owing, and payable or belonging to me, or to forgive and discharge any of the same.

3. To make expenditures for my care, maintenance, support, and general welfare, and to distribute such sums as are necessary for the care, support, and maintenance of members of my family who are dependent upon me for support.

4. To retain any property which comes into the possession of my attorney-in-fact in the form in which it was received and to make investments and changes of investments in such securities, including common and preferred stocks of corporations, or other property, real or personal, as my attorney-in-fact may deem prudent.

Power of Attorney  
Beatrice J. Pray

MERRILL O'SULLIVAN, LLP  
ATTORNEYS AT LAW  
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BEND, OR 97702

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5. To pay my debts and other obligations.

6. To sue upon, defend, compromise, submit to arbitration, or adjust any controversies in which I may be interested, and to act in my name in any complaints, proceedings, or suits with all the powers I would possess if personally present and under no legal disability.

7. To bargain for, buy, and deal in property and goods of every description.

8. To convey, grant, sell, mortgage, pledge, consign, lease, hypothecate, and in any and every manner deal in and with my property, both real and personal.

9. To advance my said attorney-in-fact's own funds on my behalf and to borrow any sums of money on such terms and at such rates of interest as to my said attorney-in-fact may seem proper and to give security for the repayment of the same.

10. To make and deliver any deeds, conveyances, contracts, covenants, and other instruments, undertakings, or agreements, either orally or in writing, of whatever kind and nature, including the right to supply the legal description of any real property involved in any of the foregoing documents, which my said attorney-in-fact in my attorney-in-fact's discretion shall deem to be for my best interests.

11. To sign, endorse, sell, discount, deliver, and/or deposit checks, drafts, notes, and negotiable or nonnegotiable instruments, including any payments to me drawn on the Treasury of the United States or the State of Oregon or any other state or governmental entity, and to accept drafts.

12. To appear and vote for me in person or as my proxy at any corporate or other meeting.

Power of Attorney  
Beatrice J. Pray

MERRILL O'SULLIVAN, LLP  
ATTORNEYS AT LAW  
805 SW INDUSTRIAL WAY, SUITE 5  
BEND, OR 97702

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13. To have access to any safe deposit box which has been rented in my name,

or in the name of myself and any other person or persons.

14. To do and perform every act necessary or desirable and to serve as representative payee with respect to rights and entitlement for my benefit and the benefit of my spouse from Social Security, Medicare, and military service.

15. To make investments and changes of investments in such income bearing securities, including common and preferred stocks of corporations, or other property, real or personal, as my said attorney-in-fact in its discretion may deem prudent, and to hold my securities in the name of its nominee or unregistered in such form that transfer thereof may be effected by delivery.

16. To withdraw any monies deposited with any bank, mutual savings bank, credit union, savings and loan association, mutual fund, money market account, investment advisor, or broker in my name or in the name of myself and any other person or persons and generally to do any business with any such financial institution or agency on my behalf.

17. To appoint and substitute any agents or attorneys-in-fact for any or all of the purposes stated herein, and to revoke their authority.

18. To sign tax returns on my behalf, and to represent me, or obtain representation for me, at any proceeding involving taxing authorities, including any tax audit or collection action.

19. To act on my behalf in dealing with my pension and retirement plans, including the power to make IRA contributions, IRA roll overs, voluntary contributions, borrow from any retirement plan, elect or select pay out options, and take any other steps

MERRILL O'SULLIVAN, LLP

ATTORNEYS AT LAW  
805 SW INDUSTRIAL WAY, SUITE 5  
BEND, OR 97702

Power of Attorney  
Beatrice J. Pray

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which I might take on my own behalf with regard to my retirement and/or IRA/pension plans.

20. To redirect my mail.

21. To cancel or continue my credit cards and/or any credit or charge accounts.

22. To take custody of my Will, deeds, life insurance policies, contracts, securities, or other important papers.

23. To reform any estate planning documents, other than Wills, if they prove to be defective after incompetency.

24. To make any decisions which the holder of the power may, in his or her own discretion, determine necessary for disposing of or transferring my property in order to effect the best result possible for my entitlement to public services or benefits.

25. To annually gift to my spouse, or any of my lineal descendants (whether then acting as attorney-in-fact or not, as I authorize self-dealing in this instance), in such portions as my attorney-in-fact may deem proper, any real or personal property, whether tangible or intangible, of which I may now or hereby may be possessed or in which I own any right, title, or interest, up to the maximum amount that can be given to a donee each year, provided, however, that such gift be of a present interest so that the gift qualifies for the federal annual gift tax exclusion. Further, my attorney-in-fact may consent to the treatment of gifts made by me or my spouse as gifts made one-half by each of us.

I authorize my said attorney-in-fact for me and in my name generally to do and perform all and every act and thing whatsoever requisite, desirable, or necessary to be done in the premises, to conduct, manage, and control all my business and my property, wheresoever situated and whether now owned or hereafter acquired, as my attorney-in-fact

MERRILL O'SULLIVAN, LLP

ATTORNEYS AT LAW  
805 SW INDUSTRIAL WAY, SUITE 5  
BEND, OR 97702

Power of Attorney  
Beatrice J. Pray

Page 4  
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10/22/09 THU 11:27 [TX/RX NO 5786]

may deem for my best interests, and to execute and acknowledge any and all instruments necessary or proper to carry out the foregoing powers, hereby releasing and saving harmless all third persons from responsibility for the acts and omissions of my said attorney-in-fact and empowering my said attorney-in-fact to indemnify all such persons against loss, expense, and liability. Third persons may rely upon the continued validity of this Power of Attorney until receiving actual knowledge of its revocation.

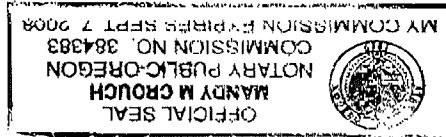
I expressly declare that I am familiar with the provisions of ORS 127.005 and that the powers of my attorney-in-fact herein-described shall be exercisable by my said attorney-in-fact on my behalf notwithstanding that I may become legally disabled or incompetent.

All questions pertaining to validity, interpretation, and administration of this power shall be determined in accordance with the laws of Oregon.

DATED this 15<sup>th</sup> day of January, 2008.

Beatrice J. Pray  
BEATRICE J. PRAY  
)  
) ss.  
)  
STATE OF OREGON  
County of Deschutes

Personally appeared before me the above-named BEATRICE J. PRAY this 15<sup>th</sup> day of January, 2008, and acknowledged the foregoing instrument to be her voluntary act and deed.



Mandy M. Crouch  
Notary Public for Oregon

MERRILL O'SULLIVAN, LLP  
ATTORNEYS AT LAW  
805 SW INDUSTRIAL WAY, SUITE 5  
BEND, OR 97702

Power of Attorney  
Beatrice J. Pray

# PARSONS BRINCKERHOFF

225 N. MARKET  
WICHITA, KS 67202



612 EXHIBIT "A"

Job Number 

|   |   |   |   |   |   |
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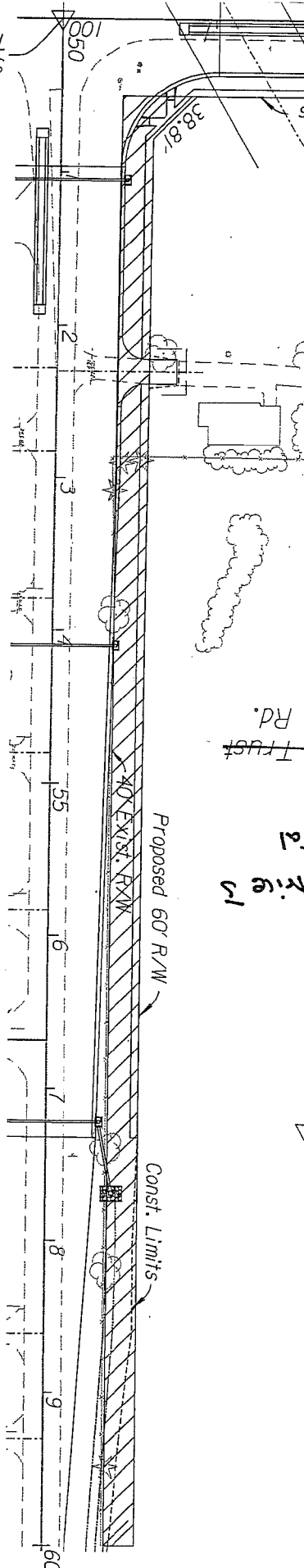
 Date 2-4-08



Donald E. & Beatrix J  
Pray JTI ETAL

~~Pray, Fern Revocable Trust~~  
1510 S. Greenwich Rd.  
MI-180

HARRY ST.



MI-180  
A tract in the SW 1/4 Section 27, Township 27  
South, Range 2 East of the 6th Principal Meridian,  
Sedgwick County, Kansas, described as: commencing  
at the SW corner of said SW 1/4; thence on an  
assumed bearing of N 00°-49'-21" W a distance  
of 87.69 feet to a point on the West line of said  
SW 1/4; thence N 89°-10'-39" E a distance  
of 50.00 feet to the point of beginning; thence  
S 45°-11'-40" E a distance of 38.81 feet; thence  
N 89°-13'-01" E a distance of 922.90 feet;  
thence S 00°-46'-59" E a distance of  
20.00 feet; thence S 89°-13'-01" W a distance  
of 950.03 feet; thence N 00°-49'-21" W  
a distance of 47.72 feet, more or less,  
to the point of beginning, said tract containing  
0.44 acres, more or less, for the purposes of  
constructing, reconstructing, widening, improving,  
draining and maintaining a road or highway.

SW COR. SW 1/4 SEC. 27,  
TWP. 27-S, R-2-E

EXHIBIT B

# PARSONS BRINCKERHOFF

225 N. MARKET  
MICHITA, KS 67202

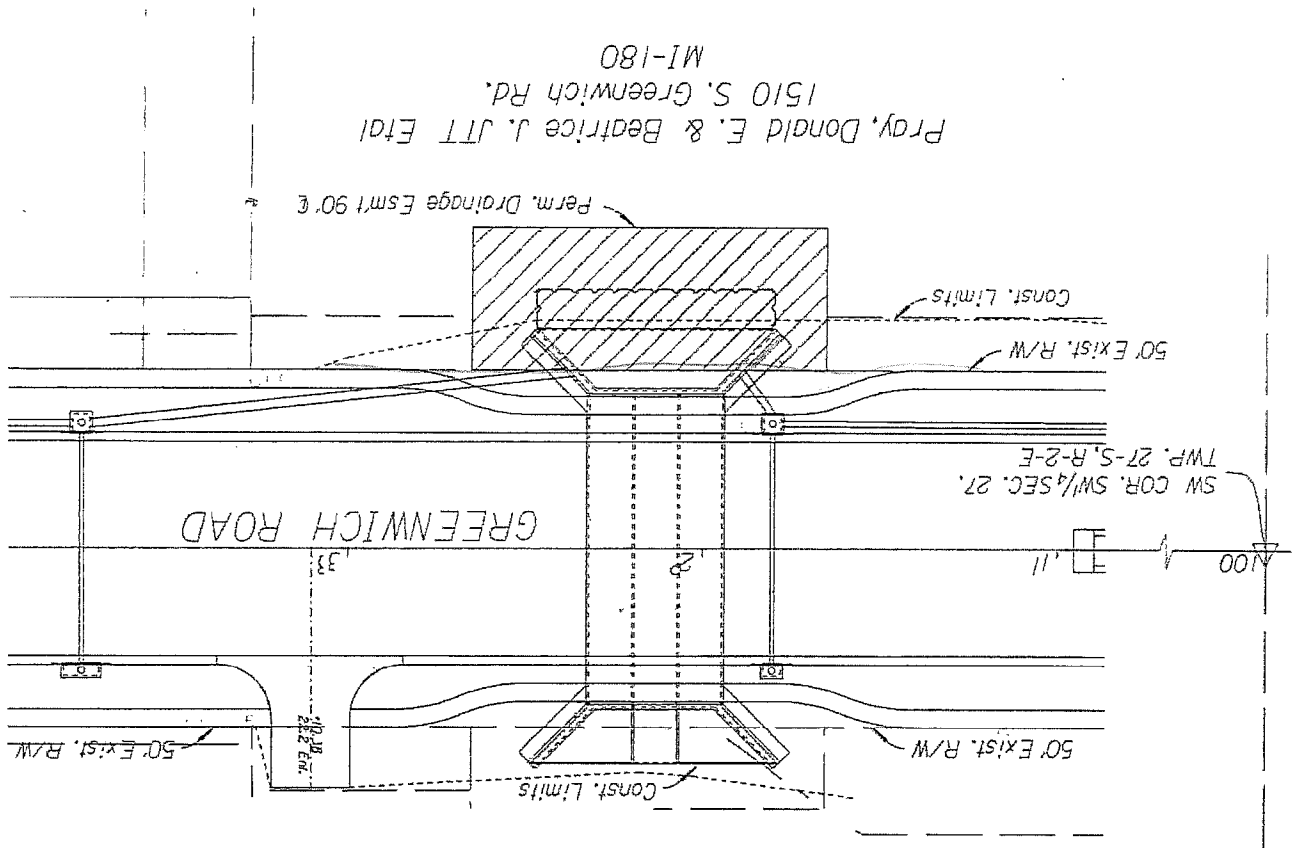


Job Number

35751A

Date

11-26-08



Pray, Donald E. & Beatrice J. JT Etal  
1510 S. Greenwiche Rd.  
MI-180

Permanent Drainage Easement

MI-180  
A tract in the SW 1/4 Section 27, Township 27 South, Range 2 East of the 6th Principal Meridian, Sedgwick County, Kansas, described as: commencing at the SW corner of said SW 1/4; thence on an assumed bearing of N 00°-49'-21" W a distance of 1265.00 feet to a point on the West line of said SW 1/4; thence N 89°-10'-39" E a distance of 50.00 feet to the point of beginning; thence S 00°-49'-21" E a distance of 100.00 feet; thence N 89°-10'-39" E a distance of 40.00 feet; thence N 00°-49'-21" W a distance of 100.00 feet; thence S 89°-10'-39" W a distance of 40.00 feet; more or less, to the point of beginning, said tract containing 4000 square feet, more or less, for the purposes of constructing, reconstructing, widening, improving, draining and maintaining a road or highway.





225 N. MARKET  
WICHITA, KS 67202

PARSONS BRINCKERHOFF

221

Exhibit C

Job Number

35751A

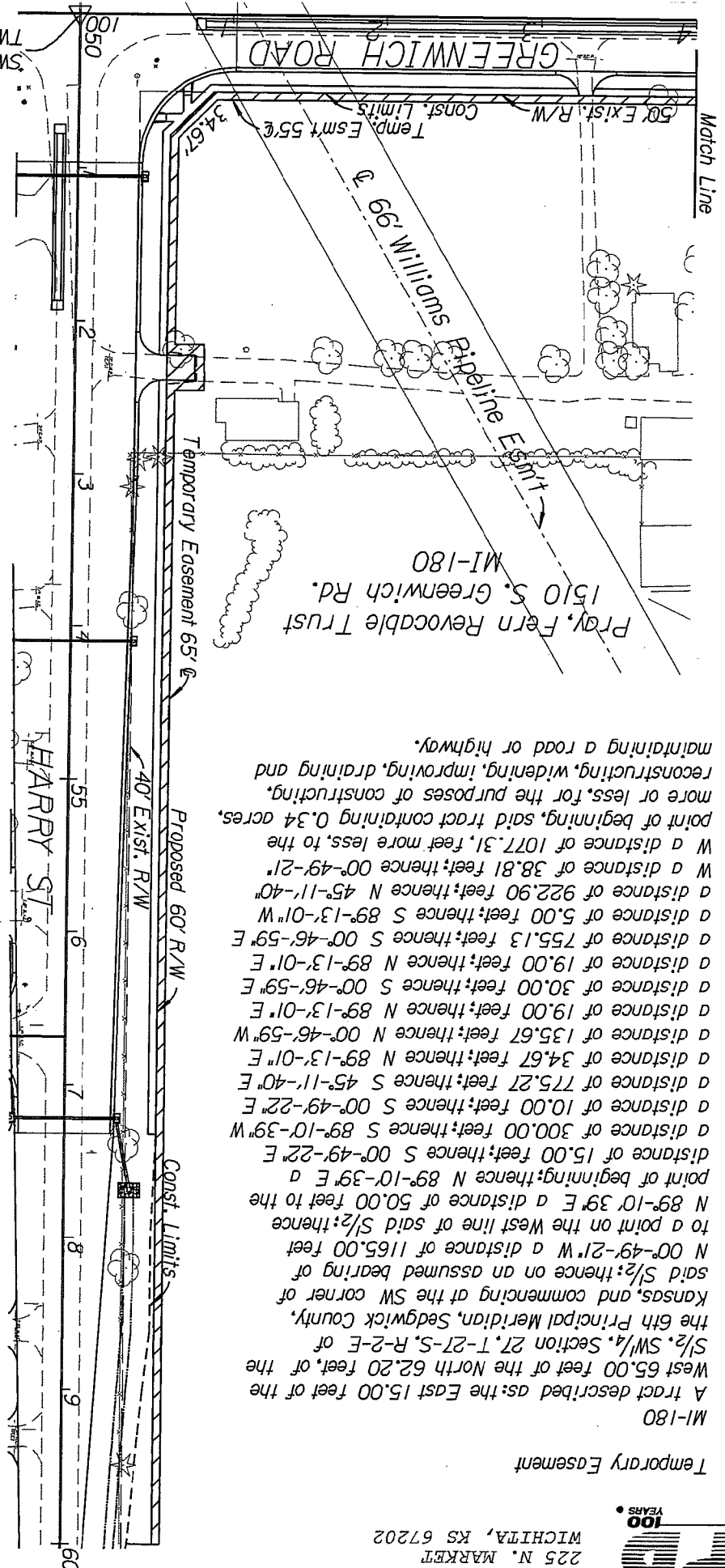
Date 4-1-08

Page 1 of 2

Temporary Easement

MI-180

A tract described as: the East 15.00 feet of the West 65.00 feet of the North 62.20 feet, of the S $\frac{1}{2}$  S.W $\frac{1}{4}$  Section 27, T-27-S, R-2-E of the 6th Principal Meridian, Sedgwick County, Kansas, and commencing at the SW corner of said S $\frac{1}{2}$ : thence on an assumed bearing of N 00°-49'-21" W a distance of 1165.00 feet to a point on the West line of said S $\frac{1}{2}$ : thence N 89°-10'-39" E a distance of 50.00 feet to the point of beginning: thence N 89°-10'-39" E a distance of 15.00 feet; thence S 00°-49'-22" E a distance of 300.00 feet; thence S 89°-10'-39" W a distance of 10.00 feet; thence S 00°-49'-22" E a distance of 775.27 feet; thence S 45°-11'-40" E a distance of 34.67 feet; thence N 89°-13'-01" E a distance of 135.67 feet; thence N 00°-46'-59" W a distance of 19.00 feet; thence N 89°-13'-01" E a distance of 30.00 feet; thence S 00°-46'-59" E a distance of 19.00 feet; thence N 89°-13'-01" E a distance of 755.13 feet; thence S 00°-46'-59" E a distance of 5.00 feet; thence S 89°-13'-01" W a distance of 922.90 feet; thence N 45°-11'-40" W a distance of 38.81 feet; thence 00°-49'-21" W a distance of 1077.31, feet more less, to the point of beginning, said tract containing 0.34 acres, more or less, for the purposes of constructing, reconstructing, widening, improving, draining and maintaining a road or highway.



SW COR. SW $\frac{1}{4}$  SEC. 27,  
TWP. 27-S, R-2-E



225 N. MARKET  
MICHITA, KS 67202

PARSONS BRINCKERHOFF

222

Exhibit C Continued

Job Number 35751A

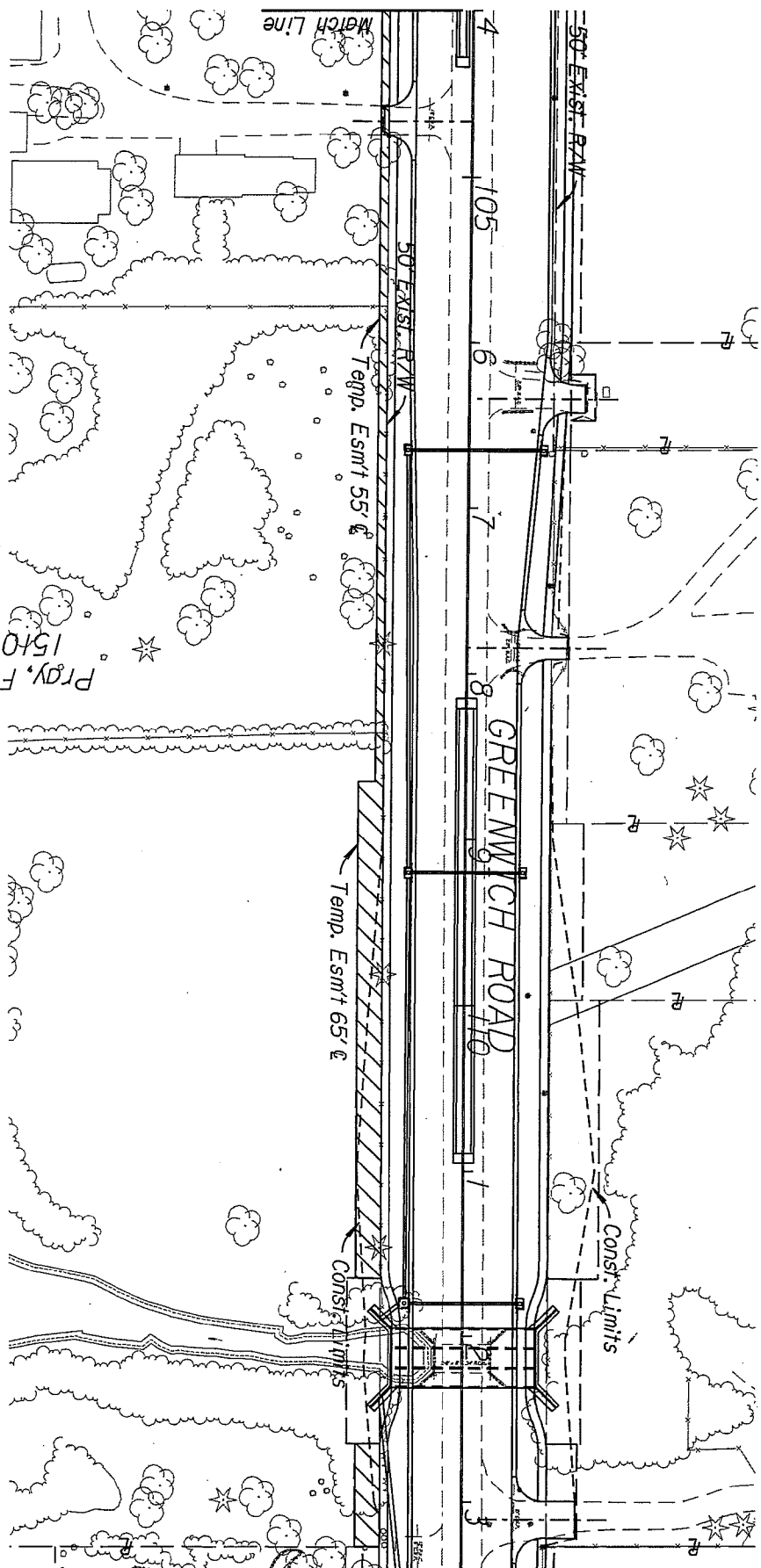
Date 4-1-08

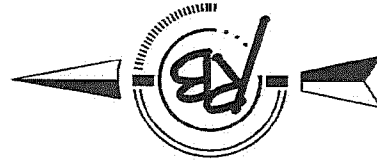
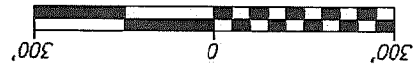
Page 2 of 2



Temporary Easement  
MI-180  
For Description See  
MI-180 page one.

Pray, Fern Revocable Trust  
1540 S. Greenwich Rd.  
MI-180





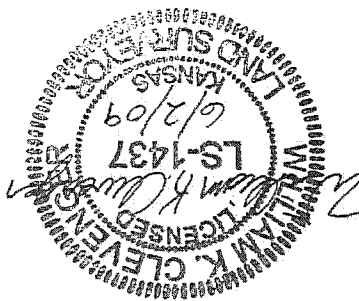
Pray, Donald E & Beatrice J Etal  
1510 S GREENWICH  
MI 00180

S.W. CORNER, SW1/4,  
SEC. 27, T27S, R2E

# DRAINAGE EASEMENT EXHIBIT

**MI 00180 Drainage Easement 35x56**

That part of the SW1/4 of Section 27, Township 27 South, Range 2 East of the Sixth Principal Meridian, Sedgwick County, Kansas described as commencing at the southwest corner of said SW1/4; thence East along the south line of said SW1/4, 1890.98 feet; thence North, perpendicular to said south line, 40.00 feet to the place of beginning; thence continuing North, perpendicular to said south line, 35.00 feet; thence East, parallel with said south line, 56.00 feet; thence South, perpendicular to said south line, 35.00 feet; thence West, parallel with said south line, 56.00 feet to the place of beginning.



**CITY OF WICHITA**  
**City Council Meeting**  
November 17, 2009

**TO:** Mayor and City Council Members

**SUBJECT:** Sale of Land on 21<sup>st</sup> Street North, East of Grove (District I)

**INITIATED BY:** Office of Property Management

**AGENDA:** Consent

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**Recommendation:** Approve the sale.

**Background:** In 1992-1993, the City acquired land east of Grove on the south side of 21<sup>st</sup> Street North for the 21<sup>st</sup> Street improvement project. All improvements were removed and the north 20 feet of the lots were utilized for the project leaving a parcel with approximately 87,750 square feet located from Erie to 110 feet east of Grove. In 1997, the Northeast Center for Health and Wellness, now the Center for Health and Wellness (CHW), leased the easterly portion of the parcel from the City and built a medical facility. They acquired the site from the City in 2003. The remaining portion of the property has approximately 54,900 square feet and is primarily zoned multifamily. CHW wishes to expand their facility and has approached the City about acquiring the remainder of the parcel.

**Analysis:** The parcel was appraised at \$65,000 (\$1.18 per square foot). CHW has agreed to acquire the property for this amount. They will pay \$27,000 at closing with the remainder paid in seven equal monthly installments. They intend to expand their existing facility with completion scheduled for mid-2010.

**Financial Considerations:** The City will receive cash consideration for the sale of the property, less any marketing costs. In addition, the sale of this property contributes to the ongoing development of the 21<sup>st</sup> Street corridor and relieves the City of any maintenance costs.

**Goal Impact:** The sale and redevelopment of this property will support a dynamic core area and vibrant neighborhood.

**Legal Considerations:** The Law Department has approved the contract as to form.

**Recommendation/Action:** It is recommended that the City Council approve the Real Estate Purchase Contract and authorize all necessary signatures.

**Attachments:** Real estate agreement, plat map and aerial.

## REAL ESTATE PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this 2<sup>nd</sup> day of November, 2009 by and between City of Wichita, Kansas, a Municipal Corporation, party of the First Part, hereinafter referred to as "Seller," whether one or more, and the Center for Health and Wellness, Inc. (CHW) a Federally Qualified Community Health Center, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

**WITNESSETH:** That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. Seller does hereby agree to sell and Buyer agrees to purchase under the terms and conditions in the Agreement the following described real property, situated in Wichita, Sedgwick County, Kansas, to wit:

The South Ninety (90) feet of Lots 3 through 13, inclusive, Block 4, Shadybrook Addition to Wichita, Sedgwick County, Kansas.

2. Buyer hereby agrees to purchase, and pay to Seller, as consideration for the conveyance to it of the above described real property for the sum of Sixty-five Thousand Dollars and No Cents (\$65,000.00) in the manner following, to-wit:

A. Twenty-seven Thousand Dollars and One Cent (\$27,000.01) at closing.  
B. Five Thousand Four Hundred Twenty Eight Dollars and Fifty-seven Cents (\$5,428.57), with no interest, to be paid by Buyer to Seller in seven (7) equal monthly installments as set forth in this agreement.

3. Seller agrees to execute a good and sufficient warranty deed to convey title in and to the above-described real property, subject to easements, restrictions and special assessments of record, if any, acceptable to Buyer. Upon payment in full of the purchase price, Seller shall deliver the deed to Buyer at Buyer's address.

4. The costs of closing, if any, shall be paid one-half by Seller and one-half by Buyer. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid 100% by Buyer at closing. Any taxes and assessments shall be prorated as of the date of closing. Taxes shall be pro-rated for calendar year on the basis of taxes levied for prior year. Within fifteen (15) days of the date of this Agreement, Seller shall cause to be issued and delivered to Buyer a title company's binding commitment to issue a title insurance policy (the "Title Commitment") that will insure the Buyer's title to the property. The Title Commitment shall provide that there would be issued to Buyer an ALTA Owner's Policy that insures the Buyer against those covered risks contained in a standard ALTA Owner's Policy, except that there shall be deleted from such policy any standard exception for mechanic's, materialmen's, and similar liens. The title insurance policy shall not be required to cover the standard exclusions and exceptions contained therein, unless otherwise provided hereinabove, any exceptions that qualify as either easements, rights of way, covenants, conditions, reservations or restrictions of record, or applicable zoning, land use, and other laws and regulations, or any exceptions that do not materially or adversely impact the value or use of the property. If a Title Commitment discloses defects in title that would not be covered by the title insurance policy, and

that is inconsistent with the preceding provisions of this Section, Buyer shall advise Seller of the same in writing within ten (10) days after Buyer's receipt of the Title Commitment. The Seller shall remedy such defects identified by the Buyer that are susceptible of being remedied within thirty (30) days and shall deliver to Buyer a revised commitment reflecting that such remedy has been effected. If the Seller does not so remedy such matters, Buyer shall have the option of (i) accepting such title as the Seller is able to convey, or (ii) terminating this Agreement and receiving from Seller a return of all amounts paid to Seller hereunder. Assuming this Agreement has not been terminated, Seller shall execute all documents reasonably required by the title insurance company for the title insurance policy to issue. The cost of the Title Commitment and the title insurance policy, as well as any costs incidental thereto, shall be paid by Buyer at closing.

5. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.

6. Possession of said real property shall transfer at closing.

7. Buyer shall pay to Seller on or before December 1, 2009, and on or before the first day of each of the six months thereafter, installments of principal (and no interest) in the amount of \$5,428.57. Any part of the principal may be prepaid at any time without penalty. Any partial permitted prepayments shall be applied to the last amounts due under this contract and shall not postpone or reduce any installments hereunder.

8. Default and Forfeiture.

(a) If Buyer fails to comply with any of the terms of or is otherwise in default under this Agreement, time being specifically made of the essence hereof, then, at the option of Seller, this Agreement shall be terminated and become immediately null and void, and all rights of Buyer hereunder shall then end, and all monies paid and improvements made hereunder shall then be retained by Seller as rent and as liquidated damages for such default and Seller shall be entitled to immediate possession of the Property, .

(b) In addition to all other rights and remedies of Seller hereunder, Seller shall be entitled to receive and Buyer shall pay to Seller, to the maximum extent permitted by applicable law, all reasonable attorney's fees incurred by Seller in seeking to enforce this Agreement.

(c) The remedies afforded to Seller under this provision are in addition to any other remedies, including specific performance, available to the Seller pursuant to the terms of this Agreement or applicable law. The choice of Seller to proceed under any remedy provided for in this Agreement will not be deemed an election of remedies or a waiver of any other remedy available to Seller.

(d) The parties have specifically and fairly bargained for the forfeiture provisions herein. Buyer understands, and acknowledges by execution of this Agreement, that this installment sale contract provides Buyer with an affordable method of financing the purchase of real estate when other means of financing, such as conventional mortgage financing, are not available to Buyer or are not feasible under the present circumstances. Buyer has had ample opportunity to consult with legal counsel of Buyer's own choice. Buyer fully understands the significance of the provisions in this Agreement. Buyer agrees and understands that Buyer shall not have any defenses to or any claims opposing the forfeiture provisions of this Agreement other than such rights as are specifically given to Buyer in this Agreement.

(e) Before Seller shall exercise any remedy for default under this contract, Seller shall give Buyer written notice of such default; . Such notice shall be sufficient if delivered to Buyer, or if mailed to Buyer at the Property address (2707 E. 21<sup>st</sup> St., Wichita, 67214) or at such other

address of which may notify Seller. Buyer shall have seven calendar days after receipt of hand delivered notice, or ten calendar days after the mailing of notice if it is mailed, within which to cure the default.

9. At Seller's request, this Agreement shall be recorded in the office of the Register of Deeds of the county wherein such real estate is located, and the expense of recording, including any applicable mortgage registration tax, shall be forthwith paid by Buyer. Buyer may, at Buyer's expense, record an affidavit of equitable interest.

10. The parties covenant and agree that except for closing and title insurance referenced elsewhere herein, each is solely responsible for the payment of any fee for brokerage, technical or other professional services relating to the execution and performance of this Contract incurred by such party.

11. Time is of the essence in the interpretation and enforcement of this Agreement, and it shall be consummated and closed on or before November 15, 2009.

12. Seller makes no warranty or guarantee as to the suitability of the real property for the intended use of Buyer. Therefore, Buyer covenants and agrees that Buyer at Buyer's own expense shall examine the real property in order to determine such suitability including but not limited to:

- A. Soils data and geology, drainage, hydrology and topographical features that would affect any present or future intended use;
- B. The presence or absence of any contamination by any hazardous substance;
- C. The quality and quantity of water available by on-site water wells, and the availability of a permit or permits therefore;
- D. The nature, extent, and cost of public utilities needed to serve all or a portion of such real property;
- E. The extent and cost of compliance with subdivision regulations, building codes and other applicable rules and regulations involving public improvements, private improvements, access, building setbacks, public dedications, platting and replatting requirements of such real property;
- F. The nature and extent of zoning and subdivision statutes, laws, ordinances and regulations affecting the present use, and the ease or difficulty involved in the zone-change and subdivision approval procedures necessary or desirable to allow for the Buyer's intended use or uses. Buyer and Seller acknowledge and agree that the real property is not currently zoned to allow the operation of a medical office, and that Buyer will have to request a zoning change from MF-29 to NO. If the Buyer's application for change of zoning classification is not approved, this Agreement shall be null and void, with Buyer and Seller relieved of all liability hereunder and Buyer's deposit and installment payments, if any, returned to Buyer.

13. Buyer also covenants and agrees that Buyer, its agents, successors and assigns any future use of the property as described above for the following uses shall be prohibited:

- A. Adult Book and Video Stores
- B. Community Correctional Facilities
- C. Half-way Houses



- D. Drug or Alcohol Rehabilitation In-patient Facilities
- E. Multi-game, Casino-style Gambling Facilities
- F. Commercial Billboards
- G. Car sales lots

14. The covenants and agreements contained in Paragraphs 12 and 13 shall survive the closing of the sale intended hereby, and they shall bind the buyer as fully after the sale as they do before.

15. Buyer hereby agrees that Buyer is accepting the subject property on an "AS IS" basis and in "AS IS" condition; and that Buyer's decision to enter into this Agreement and any future decisions it may make with regard to the property have been and will be made based on its own inspections. Buyer acknowledges that no representations or warranties as to character, quality, value, or condition have been made by any of the brokers or agents involved, and also agrees not to make any claim against the Seller or the brokers involved.

16. Buyer has presented details of the future use of the site as expansion of the CHW to the Seller for Seller's approval prior to closing. Seller shall have the right to approve the user, development plans, landscaping and other items as deemed important. If Seller does not approve of the details as presented, Buyer shall have the right to modify the proposal. If an agreement cannot be reached as to the acceptability of the proposal, this agreement shall be null and void, with Buyer and Seller relieved of all liability hereunder and Buyer's deposit and other payments made by Buyer to Seller hereunder, if any, returned to Buyer.

17. Upon closing of title, all promises, statements and obligations merge in the deed except as herein defined, and thereafter Buyer will be deemed to have waived all claims and causes of action against the Seller, its agents or assigns.

WITNESS OUR HANDS AND SEALS the day and year first above written.

**BUYER:**

By Direction of the Board of Directors  
Center for Health and Wellness, Inc. (CHW)

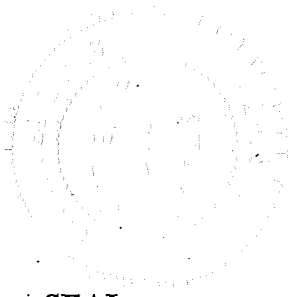
Beverly J. White, CEO  
Beverly J. White, President/CEO

**ATTEST:**

Dottie Daves, CFO  
Dottie Daves, CFO

STATE OF Kansas )  
 ) SS:  
Sedgewick COUNTY )

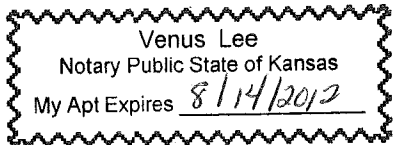
This instrument was acknowledged, before me this 27th Day of Oct, 2009, by Beverly J. White, President/CEO and Dottie Daves, CFO, of Center for Health and Wellness, Inc. and they have represented that they are authorized to execute this agreement on behalf of the corporation.



SEAL

Venus Lee  
Notary Public

My Appointment Expires:



**SELLER:**  
By Direction of the City Council

\_\_\_\_\_  
Carl Brewer, Mayor

**ATTEST:**

\_\_\_\_\_  
Karen Sublett, City Clerk

This instrument was acknowledged, before me this \_\_\_\_\_ Day of \_\_\_\_\_, 2009, by  
Carl Brewer, Mayor, and Karen Sublett, City Clerk, City of Wichita, Kansas.

\_\_\_\_\_  
Notary Public

SEAL

My Appointment Expires: \_\_\_\_\_

**Approved as to Form:**

Gary E. Rebenstorf  
Gary E. Rebenstorf, Director of Law



# 2413 to 2623 East 21st Street North



- Property Parcels
- Roads
  - State Highway
  - US Federal Highway
  - Interstate
  - KTA
  - Arterial
  - Collector
  - Minor
  - Ramp
- Railroads
- Quarter Section
- Waterways
- Streams
- Parks
- Airports
- SDERASTER.S-DEDATA.ORTH-01FT
- SDERASTER.S-DEDATA.ORTH-0
- City Limits
  - Andale
  - Bel Aire
  - Bentley
  - Cheney
  - Clearwater
  - Colwich
  - Derby
  - Eastborough
  - Garden Plain
  - Goddard
  - Hayaville
  - Kechi
  - Maize
  - Mount Hope
  - Mulvane
  - Park City

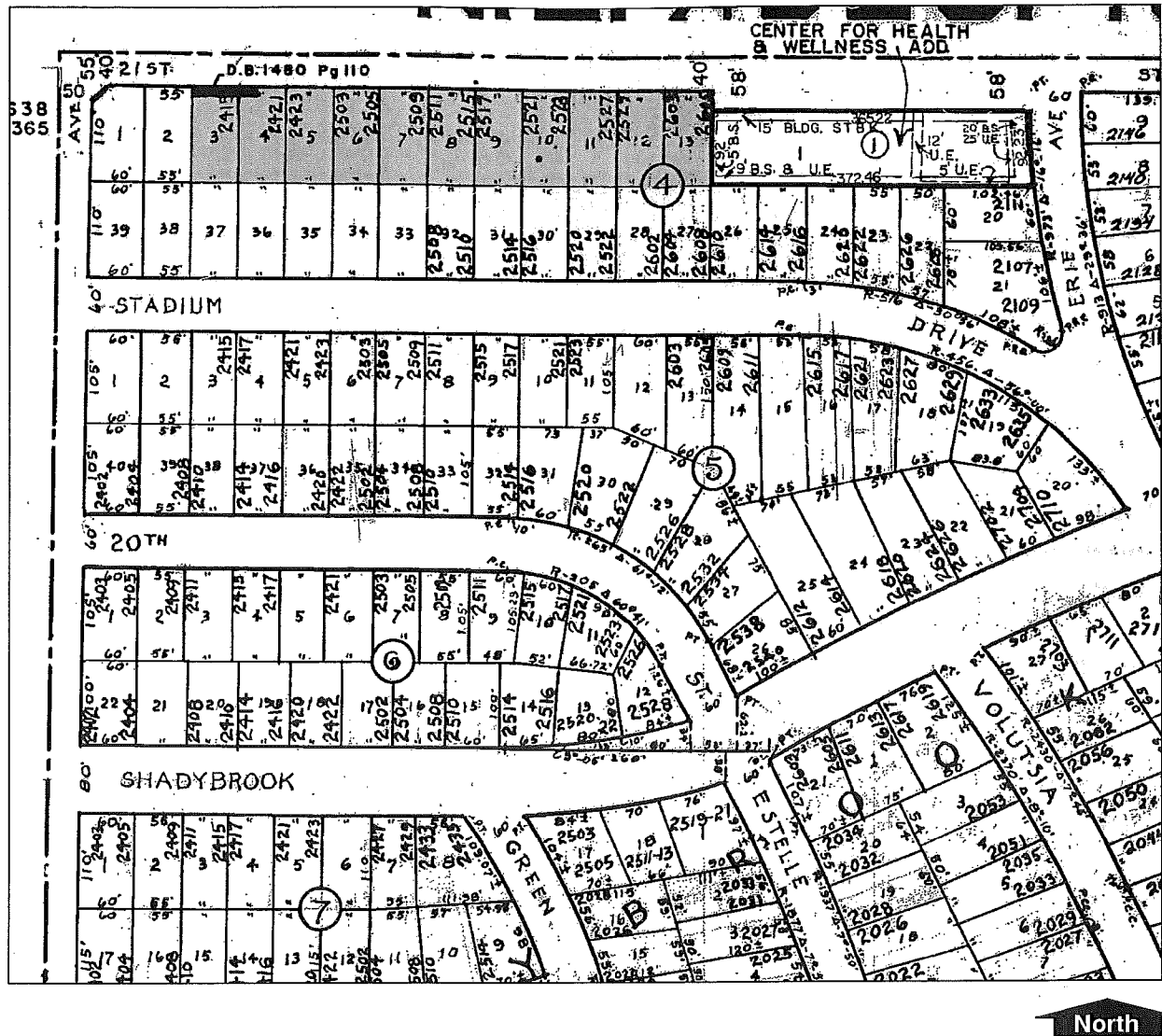


Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.



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powered By GeoMedia  
E-21ST-ST-N

# County Clerk's Map



Vacant Land  
2413-2623 E. 21<sup>st</sup> Street North, Wichita, Kansas

**Agenda Item No. XII-12.**

**City of Wichita  
City Council Meeting  
November 17, 2009**

**TO:** Mayor and City Council

**SUBJECT:** Resolution of Support for Application for Housing Tax Credits; Sunflower/Regal Plaza Senior Residences Housing Project (District I)

**INITIATED BY:** Housing and Community Services Department

**AGENDA:** Consent

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**Recommendation:** Adopt the resolution of support, and authorize the necessary signatures.

**Background:** The Housing Tax Credit Program is administered by the Kansas Housing Resources Corporation (KHRC). Enacted in the Tax Reform Act of 1986, the Housing Tax Credit Program is designed to secure private equity capital for the development of affordable rental housing. The Program can provide as much as 55%-60% of the total development cost, which reduces the amount of debt financing in affordable rental housing developments. This allows lower rents and greater affordability. The State receives a tax credit allocation from the Federal government, and requires developers/owners to obtain a resolution of support from the local government, when submitting applications for financing through the Program.

Under the City's adopted Housing Tax Credit policy, developers/owners must present proposed Housing Tax Credit projects to the applicable District Advisory Board (DAB). The policy also requires a review by the City's Development Coordinating Committee (DCC). The Planning Department and the Office of Central Inspection (OCI) also review the project for zoning and design appropriateness and provide comment regarding consistency with neighborhood plans, if applicable. Once the project is reviewed by the DAB, DCC, Planning and OCI, it is forwarded to the City Council for a public hearing, with a staff recommendation regarding the resolution of support for the Housing Tax Credit application and IRB letter of intent.

**Analysis:** On August 5, 2008, the City Council adopted a resolution of support for an application for 4% Housing Tax Credits (HTCs), in connection with the rehabilitation of an assisted living facility located at 2500 E. 27<sup>th</sup> Street North. Upon completion, the project was to have provided for 31 one-bedroom apartments of approximately 600 square feet in size. On-site services were to have been provided, including meals, transportation, laundry, and health care related services. The Council also approved the issuance of a letter of intent to issue industrial revenue bonds (IRBs) in the amount not to exceed \$1,750,000 for the project. The Council also adopted a resolution of support for a second application for HTCs, in connection with the rehabilitation of housing located at scattered sites, including 2500 E. 27<sup>th</sup>, 1460 E. 17<sup>th</sup>, 1105 E. 12<sup>th</sup>, 1036, 1056-1058 N. Cleveland. Upon completion, a total of 19 one-bedroom apartments, of approximately 700 square feet in size were to have been provided at these scattered site locations. Both resolutions were adopted following completion of the reviews and public hearings required under the HTC policy. Further, the resolutions were adopted with waiver of the 20% market rate unit requirement, as the housing projects were to serve only senior citizens, a special needs population under the City's HTC policy. The adopted resolutions included an expiration date of August 5, 2009.

Following adoption of the support resolutions, the developer submitted HTC applications to KHRC. The projects did not receive an allocation of HTCs, primarily due to changes in market conditions related to the sale of HTCs. However, KHRC recently recommended that the developer submit a new application for 9% HTCs with the two projects combined, under the new Section 1602 “Exchange” program, whereby the State can exchange all or a part of its Housing Credit Ceiling for Section 1602 federal funds. The combined project will become known as Regal Plaza Senior Residences. HOPE, Inc., originally an applicant/sponsor in connection with the previously submitted applications, will no longer be the applicant/sponsor for the newly combined project. The applicant is now reflected as Regal Plaza Senior Residences, LLC. American National Bancshares of Wichita, Inc. will continue to be the developer and sponsor.

In addition to requesting re-submission of the HTC application, KHRC also requested that the developer provide a new support resolution for the new application, because the previously adopted resolutions of support reflected an expiration date of August 5, 2009. A new resolution document, which combines the two projects and removes HOPE Properties V, LLC, as a party to the application has been drafted by Housing and Community Services staff. The project locations, the scope of the project and the number of units have not changed. Further, the combined project will only serve senior citizens, a special needs population, and thus, the new resolution of support will apply to 100% of the units. Since the characteristics of the project have not changed, and the procedural requirements of the City’s Housing Tax Credit Policy do not contemplate an end date for resolutions of support, it is the interpretation of Housing and Community Services staff that the developer has already complied with all of the procedural requirements of the City’s Housing Tax Credit Policy.

The resolution of support does not constitute final plan or design approval. If the project is awarded Housing Tax Credits, the developer must comply with all requirements associated with appropriate plan reviews required for issuance of a City building permit. These reviews will include compliance with the City of Wichita’s Housing Tax Credit Policy design guidelines. Further, the developer must comply with any additional reviews that may be requested by the City Council member in whose district the proposed project is planned.

Housing and Community Services Department staff has conducted a limited review of tax records for the developer and there are no outstanding obligations at this time.

**Financial Consideration:** The issuance of IRBs will not be necessary under the new application. The total project cost is estimated to be \$5,599,280, including approximately \$5,044,000 in rehabilitation/construction expenses. The developer intends to finance the project utilizing funding from the sale of 9% housing tax credits, owner equity, owner financing, and deferred developer fees. The City will not participate in the financing of the project.

**Goal Impact:** The proposed project contributes to the City Council goal of Economic Vitality and Affordable Living.

**Legal Consideration:** The developer complied with the Housing Tax Credit policy requirements as specified in City Council Resolution No. R 07-584, when the original support resolutions were adopted. The new resolution document has been approved as to form by the City Law Department.

**Recommendation/Actions:** It is recommended that the City Council adopt the resolution of support, and authorize the necessary signatures.

**Attachment:** Resolution document.

**RESOLUTION NO. 09-363**

**A RESOLUTION ESTABLISHING SUPPORT OF THE DEVELOPMENT OF AFFORDABLE HOUSING IN THE CITY OF WICHITA, KANSAS.**

WHEREAS, the City of Wichita, Kansas has been informed by Regal Plaza Senior Residences, LLC, and American National Bancshares of Wichita, Inc., that a housing tax credit application will be filed with the Kansas Housing Resources Corporation for the development of affordable rental housing to be located on sites legally described as follows:

Lots 31, 33, 35, 37, 39, 41, and 43, Cleveland Avenue, Getto's Addition to Wichita, Sedgwick County Kansas;

Lots 19, 21, 23, 25, and 27, Mathewson Avenue, D.W. Jones Addition to Wichita, Sedgwick County, Kansas

Lots 50, 52, 54, 56, Wabash Avenue, Burleigh's 3<sup>rd</sup> Addition to Wichita, Sedgwick County, Kansas

and

Lot 1, Block A, Conquest North Addition to Wichita, Sedgwick County, Kansas

WHEREAS, this housing development will contain up to 50 one-bedroom apartment units;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS:

That the Governing Body of the City of Wichita, Kansas supports and approves the development of the aforesaid housing in our community, subject to city ordinances and the building permit process. This Resolution is effective until April 30, 2010. In the event that any of the characteristics mentioned above should change prior to the issuance of a building permit, this resolution is null and void.

This resolution does not constitute design or plan approval by the City of Wichita. The project design must comply with the City of Wichita's Housing Tax Credit Policy design guidelines, which will be determined by the Metropolitan Area Planning Department and the Office of Central Inspection, after the project is approved for tax credits. During that review, complete building plans may be submitted to the Council Member, at the Council Member's request, prior to issuance of a building permit. All projects must comply with all applicable building codes, zoning codes, ordinances, and requirements.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF WICHITA, this 17<sup>th</sup> day of November, 2009.

\_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

Approved as to Form:

\_\_\_\_\_  
Gary E. Rebenstorf, City Attorney

**City of Wichita  
City Council Meeting  
November 17, 2009**

**TO:** Mayor and City Council

**SUBJECT:** Budget Adjustment - Grant Matches

**INITIATED BY:** Wichita Transit

**AGENDA:** Consent

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**Recommendation:** Approve the budget adjustment.

**Background:** Wichita Transit is financed with a combination of local funds and grant funds. Many, but not all, of these grants require some City match, usually 20 percent of the total expenditures. Grant periods typically span different fiscal years than the City's calendar year. In addition, grant funds are typically drawn down to reimburse the City, after City funds have been initially committed. The timing of grant matches and the amount of commitment of local funds is difficult to determine each year. The Transit budget includes \$917,372 as local match requirements.

**Analysis:** The 2009 Wichita Transit budget was developed assuming federal ARRA funding would begin in July, 2009. ARRA funding is 100% federal and includes funds for fuel, maintenance, and ADA purchased rides. However, that funding was not made available by the FTA until the beginning of September, which resulted in using more federal grant funding which requires a 20% match, thus creating a shortfall in the budget. Additionally, vacant transit operator positions resulted in increased labor costs due to having to pay overtime to existing operators to cover those vacancies. However, Wichita Transit is projected to underspend the local funding in the commodities budget, primarily due to lower than budgeted fuel prices and there have been higher than expected fare revenues. Staff proposes to use these savings and revenues to increase the amount available to match federal grants. This can be accomplished by making a budget adjustment from line items where there is a savings to the line item for grant match.

**Financial Considerations:** The increased amount projected to match grants in 2009 is up to \$450,000. Expenditures in other operating budget line items are anticipated to be underspent by a like amount. If there is not enough underspending within the operating budget, there will be a need to increase expenditure authority which can be increased if the cash fund balance allows, as the Transit Fund is not certified by the State of Kansas.

**Legal Considerations:** City Council approval is required for budget transfers in excess of \$25,000. The Transit Fund budget is not certified by the State of Kansas, so the total budget can be increased without re-certification.

**Recommendations/Actions:** Approve the budget adjustment and authorize the transfer from savings in operating line items, and an increase in the budget, if necessary, to grant match line items.



**Agenda Item No. XII-14**

**City of Wichita  
City Council Meeting  
November 17, 2009**

**TO:** Mayor and City Council

**SUBJECT:** HOME CHDO Operating Support Funding (Districts I, III, IV, V, VI)

**INITIATED BY:** Housing and Community Services Department

**AGENDA:** Consent

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**Recommendation:** Approve the recommended allocations and the funding agreements.

**Background:** On June 2, 2009, the City Council approved final allocations under the 2009-2010 Consolidated Plan, which included \$50,000 of HOME Investment Partnerships Program (HOME) funds for operational support funding for City-designated Community Housing Development Organizations (CHDOs). HOME regulations require a CHDO to be under contract to receive HOME funding for investment in housing to be developed, sponsored, or owned by the organization, as part of a participating jurisdiction's CHDO set-aside funding, in order to receive operational support funding. Operating expenses are defined as reasonable and necessary costs for the operation of the CHDO, and may include salaries, wages, and other employee compensation and benefits. Expenses for education, training, travel, rent, utilities, communications costs, taxes, insurance equipment, materials and supplies are also eligible. A maximum grant amount of \$30,000 is available to any one CHDO, under the City's program.

**Analysis:** Housing and Community Services staff members have evaluated funding applications and make the following recommendations for funding, based on anticipated housing production utilizing 2009 City HOME Program funding:

***Mennonite Housing Rehabilitation Services (MHRS), \$28,945***, in order to provide operational support for the organization's 2009 Local Investment Area (LIA) CHDO Set-Aside Neighborhood Homes projects, Boarded-up House projects, and projects to be developed with Housing Development Loan Program funding. Operational support funding will be utilized to partially fund the salary of MHRS' project coordinator.

During the 2008-2009 program year, MHRS completed construction and sale of 22 new homes within the City's LIAs utilizing CHDO set-aside funding, the Boarded-up House Program, and funding provided under the Housing Development Loan Program.

***Power CDC, \$18,420***, in order to provide operational support for the organization's 2009 Northeast LIA CHDO Set-Aside single-family housing projects, and single-family development projects to be undertaken with funding provided under the Housing Development Loan Program. Operational funding will be utilized to partially fund the salary and benefits for the Executive Director.

During the 2008-2009 program year, Power CDC completed construction and sale of eight homes utilizing CHDO set-aside funding, funding provided under the Housing Development Loan Program, and Boarded-up House Program funding.

*Community Housing Services, \$2,635*, in order to provide operational support for the organization's 2009 LIA CHDO Set-Aside single-family housing development project, which can be undertaken within any of the City's LIAs. Operational funding will be utilized to partially fund the salary and benefits of the organization's Construction Coordinator, who is primarily responsible for housing development production.

Community Housing Services completed construction and sale of one home during the 2008-2009 program year, utilizing CHDO set-aside funding.

**Financial Considerations:** Funding for these allocations will come from the 2009-2010 HOME Grant, as previously allocated by the City Council. Funding allocations are based on anticipated housing production utilizing 2009 City HOME Program funding.

**Goal Impact:** The proposed allocations will assist City CHDOs in contributing to the City Council goals of Economic Vitality and Affordable Living, and Dynamic Core Area and Vibrant Neighborhoods.

**Legal Considerations:** Funding agreements have been approved as to form by the City Law Department.

**Recommendations/Actions:** It is recommended that the City Council approve the recommended allocations and the funding agreements, and authorize the necessary signatures.

**Attachments:** Funding agreements.

GRANT AGREEMENT  
Between  
**THE CITY OF WICHITA**  
**HOUSING SERVICES DEPARTMENT**  
A  
PARTICIPATING JURISDICTION  
And  
**Mennonite Housing Rehabilitation Services, Inc.**  
**(The Agency)**  
A  
COMMUNITY HOUSING DEVELOPMENT ORGANIZATION  
  
**Operating Support Funding**  
**2009-2010**  
  
HOME Investment Partnerships  
Program

Housing and Community Services Department  
City of Wichita  
332 N. Riverview  
Wichita, KS 67203  
Phone (316) 268-4688  
Fax (316) 268-4219

No. \_\_\_\_\_

## **AGREEMENT**

THIS CONTRACT, dated to be effective the 17<sup>th</sup> day of November, 2009, by and between the City of Wichita, Kansas (hereinafter referred to as the City) and Mennonite Housing Rehabilitation Services, Inc. (hereinafter referred to as the "Agency").

WITNESSETH THAT:

WHEREAS, the City is entitled to receive a HOME Investment Partnerships Program Grant (hereinafter referred to as HOME), from the U.S. Department of Housing and Urban Development (hereinafter referred to as the "Department").

WHEREAS, the Agency is desirous of participating in activities eligible under HOME, and further agrees that the beneficiaries of its activities under the program and this agreement are, or will be, individuals or families who meet the income eligibility guidelines of Title 24 CFR Part 92.216/217 as applicable; and

WHEREAS, the purpose of the assistance to be provided under this agreement is specifically authorized by Title 24 CFR Section 92.208; and

WHEREAS, the City deems the activities to be provided by the Agency as consistent with, and supportive of the HOME Investment Partnership Program, and the Agency requires the financial assistance of the City to initiate its activities; and

WHEREAS, the cooperation of the City and the Agency is essential for the successful implementation of an Affordable Housing Program;

NOW, THEREFORE, the contracting parties do mutually agree as follows:

SECTION 1. SCOPE OF SERVICES. The Agency must follow the Performance Criteria and Program Description as outlined in Exhibit B. Any programmatic change substantially altering the contract's original intent or financial change in contract amount or line items in the approved budget that is greater than \$10,000 shall require a written contract amendment. The amendment shall be approved by the City Council and shall also be approved and signed by all parties to the original contract.

SECTION 2. TIME OF PERFORMANCE. The services of the Agency are to begin November 17, 2009 and end no later than December 31, 2010 and shall be undertaken to accomplish the purposes of this contract.

### SECTION 3. RECORDS, REPORTS AND INSPECTION.

A. Establishment and Maintenance of Records. The Agency shall establish and maintain records as prescribed by the Department, and/or the City, with respect to all matters covered by this contract. Except as otherwise authorized by the Department and/or the City, the Agency shall (Per 24 CFR 92.508) **retain such records for a period of five years following the date final payment is received under this contract.**

B. Documentation of Costs. All costs shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this contract shall be clearly identified and readily accessible.

C. Reports and information. The Agency, at such times and in such forms as the City or its designated and authorized representative(s) may require, shall furnish to the City or its designated and authorized representative(s) such statements, records, reports, data and information as the City may request pertaining to matters covered by this contract.

D. Audits and Inspections. The Agency shall at any time and as often as the Housing and Community Services Department, or the City or the Comptroller General, or the Department of Housing and Urban Development, (HUD) or the HUD Inspector General of the United States may deem necessary, make available all its records and data for the purpose of making audits, reviews, examinations, excerpts and transcriptions.

SECTION 4. CONFLICT OF INTEREST. No owner, Agency or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official or consultant of the owner, Agency or sponsor) whether private, for profit or non-profit (including a Community Housing Development Organization (CHDO) when acting as an owner, Agency or sponsor) may occupy a HOME-assisted affordable unit in a project. This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or Agency of a rental housing project who occupies a housing unit as the project manager or maintenance worker. (24 CFR 92.356 (f)(1)).

EXCEPTIONS: An exception may be granted in accordance and in compliance with 24 CFR 92.356 (f)(2)(I) through (V), and with the City's prior approval.

### SECTION 5. DISCRIMINATION.

A. Discrimination Prohibited. No recipient or proposed recipient of any funds, services or other assistance under the provisions of this contract or any program related to this contract, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this contract on the grounds of race, color, national origin, ancestry, religion, disability, sex or age. (Reference Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352)). For purposes of this section, "program or

activity" is defined as any function conducted by an identifiable administrative unit of the Agency receiving funds pursuant to this contract.

B. The Agency further agrees to implement and comply with the "Revised Non-Discrimination and Equal Employment Opportunity Statement for contracts or agreements" as provided in Exhibit A attached hereto.

C. The Agency will not discriminate against any employee or applicant for employment because of race, color, national origin, sex, or religion, in accordance with Executive Order 11246 – Equal Employment Opportunity, as amended and its implementing regulations at 41 CFR Part 60. If the Agency has fifteen or more employees, the Agency is prohibited from discriminating against any employee or applicant with a disability, in accordance with Title I of the Americans with Disabilities Act of 1990 (ADA). Nondiscrimination notices should be included in all job postings and posted in a visible place in the Agency's office.

#### SECTION 6. EMPLOYMENT OPPORTUNITIES FOR BUSINESSES AND LOWER INCOME PERSONS IN CONNECTION WITH ASSISTED PROJECTS.

A. GENERAL. Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701 u., and Sec. 7 (d), Department of HUD Act, 42 U.S.C. 3535 (d) is applicable to all projects assisted by any Department program in which loans, grants, subsidies or other financial assistance, including HOME Investment Partnerships Program under the Act are provided in aid of housing, urban planning, development, redevelopment or renewal, public or community facilities, and new community developments.

##### B. Assurance of Compliance.

1. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 u (section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

2. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135 and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability that would prevent them from complying with these requirements.

3. The Agency agrees to send to each labor organization or representative of workers with which the owner has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both

employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

4. The Agency agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

5. The Agency will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected, but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

6. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

7. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

8. Every contract or agreement entered into by the Agency that involves funds provided under this contract will have incorporated therein subsection B of Section 6 of this contract.

9. In the event the Agency sells, leases, transfers or otherwise conveys land upon which work in connection with this project is to be performed, the City must be notified in writing, thirty (30) days prior to such action. Further, prior to sale or lease of property purchases, funded under this agreement, the Agency shall include in each contract or subcontract for work on such land, a clause requiring the purchaser, lessee or Agency to assume the same obligations as the Agency for work under subsection B of Section 6 of this contract. Each such purchaser, lessee or Agency shall be relieved of such obligations upon satisfactory completion of all work to be performed under the terms of the redevelopment contract.

**SECTION 7. FEDERAL LABOR STANDARDS PROVISIONS.** Except with respect to the rehabilitation of residential property containing less than twelve units, the Agency and all contractors

and subcontractors engaged under contracts in excess of \$2,000 for the construction, prosecution, completion or repair of any building or work financed in whole or in part with assistance provided under this contract **will comply with the Davis-Bacon Act** (40 U.S.C. 276 a to a-7), as supplemented by Department of Labor (DOL) regulations (29 CFR, Part 5), the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented in DOL regulations (29 CFR, Part 3), sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by DOL regulations (29 CFR, Part 5), and the regulations issued pursuant thereto. **The Agency shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions consistent with applicable Federal Labor Standards.** No contracts under this section shall be awarded to any contractors or subcontractors debarred for violating Federal Labor Standards Provisions. **This Project does not include construction, prosecution, completion or repair of any building and is exempt from Davis-Bacon Act wage requirements.**

The Agency shall take affirmative action to ensure that applicants for employment are employed, contractors or subcontractors receive contracts, and all employees are treated, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following:

employment, recruitment or recruitment advertising,  
contracting or subcontracting, promotion, demotion,  
transfer, layoff, termination, rates of pay or other  
forms of compensation, and selection for training,  
including apprenticeship.

The Agency shall incorporate the foregoing requirements of this paragraph in all of its contracts, except those exempt by law, and will require all of its contractors to incorporate such requirements in all subcontracts.

#### SECTION 503 AFFIRMATIVE ACTION FOR QUALIFIED INDIVIDUALS WITH DISABILITIES:

The Agency and any subcontractors will comply with the provisions of Section 503 of the Rehabilitation Act of 1973, if the funding award of their Agreement is \$2,500 or more, including, but not limited, to the following:

a) The Agency will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified.

b) The Agency agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices, including, but not limited to, the following:



Employment, recruitment or recruitment advertising, contracting or subcontracting, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

c) **The Agency agrees to post in conspicuous places, within administrative office and warehouse facilities available to employees and applicants for employment, notices, which make reference to the Agency's compliance with The Rehabilitation Act.** Such notices shall state the Agency's obligation under the law not to discriminate on the basis of physical or mental disability and to take affirmative action to employ and advance in employment qualified individuals with disabilities.

SECTION 8. COMPLIANCE WITH LOCAL LAWS. All parties shall comply with all applicable laws, ordinances, codes and regulations of the State of Kansas and local governments.

SECTION 9. ASSIGNABILITY. The Agency shall not assign any interest in this contract without prior written consent of the City.

SECTION 10. POLITICAL ACTIVITY PROHIBITED.

A. None of the funds, materials, property or services provided directly or indirectly under this contract shall be used for partisan political activity.

B. The funds provided under this contract shall not be engaged in any way in contravention of Chapter 15 of Title 5, U.S.C.

SECTION 11. LOBBYING PROHIBITED. None of the funds provided under this contract shall be used for lobbying and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America or the Legislature of the State of Kansas.

SECTION 12. PAYMENTS.

A. Compensation and Method of Payment. Compensation and method of payment to the Agency, relative to conducting the operations of the project activities and services as herein described, will be carried out as specified in Exhibit B attached hereto, and will be administered under the established accounting and fiscal policies of the City of Wichita.

B. Total Payments. Total Payment to the Agency will not exceed \$28,945 as referenced in Exhibit B.

C. Restriction on Disbursements. No Entitlement Funds shall be disbursed to the Agency or contractor except pursuant to a written contract, which incorporates by reference the general conditions of this contract.

D. Unearned Payments. Under this contract unearned payments may be suspended or terminated if the entitlement funds to the City of Wichita under the HOME Investment Partnerships Program (24 CFR Part 92) are suspended or terminated.

SECTION 13. TERMINATION CLAUSE. Upon breach of the contract by the Agency, the City, by giving written notification, may terminate this contract immediately. A breach shall include, but not be limited to, failure to comply with any or all items contained within Section 1 through Section 26, Exhibits and/or provisions of any subsequent contractual amendments executed relative to this contract. In the event of a breach of contract, the Agency agrees to re-pay any HOME funds advanced under this agreement.

SECTION 14. AMENDMENTS.

A. To provide necessary flexibility for the most effective execution of this project, whenever both the City and the Agency mutually agree, changes to this contract may be effected by placing them in written form and incorporating them into this contract.

B. Programmatic changes substantially altering the contract's original intent or financial changes in contract amount or line items in the approved budget (Exhibit C) that are greater than \$10,000 shall require a written contract amendment. The amendment must be approved by the City Council and must also be approved and signed by all parties to the original contract.

SECTION 15. POLLUTION STANDARDS. In the event the grand total of Exhibit C is in excess of \$100,000, the Agency agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 185, et seq.) and the Federal Water Pollution Control Act (33 U.S.C.1251, et seq.), as amended.

SECTION 16. ARCHITECTURAL BARRIERS. Every building or facility (other than a private residential structure) designed, constructed or altered with funds provided pursuant to this contract shall be designed, altered or constructed in accordance with the standards issued under the Architectural Barriers Act of 1968 (42 USC 4151 et. seq.), as amended, and the minimum guidelines and requirements issued by the Architectural and Transportation Compliance Board pursuant to Section 502 (b.) (7.) of the Rehabilitation Act of 1973 (29 USC 792 (b.) (7.) as amended.

The Section 504 implementing regulations (24 CFR Part 8) apply to this project. Newly constructed or rehabilitated housing for purchase or single-family housing developed with Federal funds must be made accessible upon the request of the prospective buyer if the nature of the prospective occupant's disability so requires. Should a prospective buyer request a modification to make a unit accessible, the owner/Agency must work with the buyer to provide specific features that meet the need(s) of the prospective homebuyer/occupant. If the design features that are needed for the buyer are design features that are covered in the Uniform Federal Accessibility Standards (UFAS), those features must comply with the UFAS standard. The Agency shall be permitted to depart from the standard in order to have the buyer/occupant's needs met.

Multi-family dwellings must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-19), and Section 504 of the Rehabilitation Act of 1973, as applicable.

SECTION 17. ANTI-TRUST LITIGATION. For good cause, and as consideration for executing this contract, the Agency, acting herein by and through its authorized agent, hereby conveys, sells, assigns and transfers to the City of Wichita all right, title and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Kansas, relating to the particular product, products, or services purchased or acquired by the Agency pursuant to this contract.

SECTION 18. UNIFORM GRANT ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES. During the administration of this contract, the Agency shall comply with 24 CFR 84.21, Standards for financial management systems, as follows:

- (a) Agency is required to relate financial data to performance data and develop unit cost information whenever practical.
- (b) Agency's financial management systems shall provide for the following:
  - (1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in §84.52. If a recipient maintains its records on other than an accrual basis, the Agency shall not be required to establish an accrual accounting system. The Agency may develop such accrual data for reports on the basis of an analysis of the documentation on hand.
  - (2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.
  - (3) Effective control over and accountability for all funds, property and other assets. The Agency shall adequately safeguard all such assets and assure they are used solely for authorized purposes.
  - (4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.
  - (5) Written procedures to minimize the time elapsing between the transfer of funds to the Agency from the City, and the issuance or redemption of checks, warrants or payments by other means for program purposes by the Agency. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101-453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

- (6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.
  - (7) Accounting records including cost accounting records that are supported by source documentation.
- (c) Where the City guarantees or insures the repayment of money borrowed by the Agency, The City, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the City.
- (d) The City may require adequate fidelity bond coverage where the Agency lacks sufficient coverage to protect the City's interest.
- (e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States . "

SECTION 19. RENEGOTIATION. This contract may be renegotiated in the event alternate sources of funding become available during the term of the contract.

SECTION 20. LEAD-BASED PAINT POISONING PREVENTION. The Agency will comply with the lead-based paint provisions at 24 CFR Part 35 and at 24 CFR 570.608, and Title X of the Housing and Development Act of 1992. Compliance will include all activities required by these regulations. The Agency also agrees to document each client file with regard to these provisions, and action(s) taken if required. A copy of the current HUD Lead-Based Paint Certification will be retained in the file of each client assisted with HOME funds under this contract. The Agency will comply with the Lead-Based paint Poisoning Prevention Act (42 U.S.C. 4821 et seq.) and 24 CFR part 35. The Project will comply with section 92.355 of the HOME rule. The Agency will also comply with the lead-based paint provisions of section 982.401(j) and the Lead-Based Paint provisions of the Section 8 Housing Quality Standards (HQS), irrespective of the applicable property standard under section 92.251. The Agency will comply with sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (P.L. 102-550), and the regulations found at 24 CFR part 35.

SECTION 21. TERMINATION FOR CONVENIENCE. The City may terminate this contract at any time by a notice in writing from the City to the Agency. If the contract is terminated by the City as provided herein, the Agency will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Agency covered by this contract, less payments of compensation previously made: Provided, however, that if less than sixty (60) percent of the services covered by this contract have been performed upon the effective date of such termination, the Agency shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expense (not otherwise reimbursed under this contract) incurred by the Agency during the contract period which are directly attributable to the uncompleted portion of the services covered by this contract.

If this contract is terminated due to the fault of the Agency, Section 13 herein relative to termination shall apply.

SECTION 22. REFUND OF INCOME. All income earned by a project as a result of entitlement funds shall be accounted for and refunded to the City quarterly or used to offset project cost unless otherwise specified in Exhibit B. Earned income shall be defined as fees received, subsidies, sales and any program income.

SECTION 23. REVERSION OF ASSETS. In the event this contract is terminated, due to breach, convenience, or expiration, the Agency agrees to transfer ownership of any real property purchased with HOME funds under this agreement, to the City. This clause shall not apply if the project has been completed as contractually agreed, and the applicable affordability period has expired.

SECTION 24. OTHER FEDERAL REGULATIONS. Activities funded with HOME funds must comply with all of the following federal laws, executive orders and regulations pertaining to fair housing and equal opportunity, as follows:

Title VIII of the Civil Rights Act of 1968 (Fair Housing Act, (42 U.S.C. 3601-3620) As Amended, and implementing regulations at 24 CFR 100. The Fair Housing Act prohibits discrimination in the sale, rental and financing of dwellings and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status, and disability.

Title VI of the Civil Rights Act of 1964, As Amended (42 U.S.C. 2000d et seq.). This law prohibits discrimination on the basis of race, color, and national origin in all Federally-assisted programs.

The Age Discrimination Act of 1975, As Amended (42 U.S.C. 6101), and implementing regulations at 24 CFR Part 146. This law prohibits age discrimination based on disability in all programs or activities operated by recipients of Federal financial assistance.

Equal Opportunity in Housing (Executive Order 11063, and Executive Order 12259), and implementing regulations at 24 CFR Part 107. These Executive Orders prohibit discrimination against individuals on the basis of race, color, religion, sex, and national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with Federal funds.

Title II of the Americans with Disabilities Act (ADA). Title II of ADA prohibits discrimination against persons with disabilities in all programs, activities, and services of a public entity. (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225)

SECTION 25. DISBURSEMENT OF HOME FUNDS. The Agency may not request disbursement of HOME funds under this agreement until the funds are needed for payment of eligible costs. Unless otherwise approved by the Housing Services Department, payments to the

Agency will be provided on a reimbursement basis. The amount of each request will be limited to the amount needed.

SECTION 26. APPENDICES. All exhibits referenced in this contract, all amendments mutually agreed upon, and modifications made by both parties are hereby incorporated as though fully set forth herein.

Exhibit A: Revised Non-Discrimination & Equal Employment  
Opportunity Statement

Exhibit B: Performance Criteria and Program Description

Exhibit C: Budget

**Mennonite Housing Rehabilitation Services, Inc.  
(the Agency)**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title of Officer

\_\_\_\_\_  
Date

**CITY OF WICHITA, at the Direction of the City Council**

By \_\_\_\_\_  
Carl Brewer, Mayor

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

\_\_\_\_\_  
Date

Approved as to Form:

\_\_\_\_\_  
Gary E. Rebenstorf, City Attorney  
And Director of Law of the  
City of Wichita

\_\_\_\_\_  
Date

**REVISED NON-DISCRIMINATION AND  
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM  
REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
  - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
  - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
  - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
  - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;



5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
  2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
  3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
  4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

## Exhibit B

### PERFORMANCE CRITERIA AND CONTRACT OBJECTIVES

It is mutually agreed and understood by the City of Wichita and the Agency, hereinafter referred to as the "City" and "Agency," respectively, that execution of this contract obligates the Agency to the following performance requirements.

HOME operating funds in the amount of \$28,945 shall be used for the operating expenses of the Agency. Eligible costs are outlined in 24 CFR Part 92, dated September 16, 1996 as amended, as specifically outlined at 24 CFR 92.208.

#### I. Administration

The Agency's Executive Director will supervise operations and administration on a day-to-day basis. The Agency's Board of Directors is ultimately responsible for program administration.

#### A. Funding

It is mutually agreed by and between the City and the Agency that the total HOME funds available to the Agency will be \$28,945, to provide operational support for HOME-related, single-family housing development activities. Specific use of the funding to be set forth in the sections entitled, Budget and Method of Payment. Funding provided under this contract incorporates the funding application issued in connection with the funding, and the Agency's response, unless superceded by this contract. Equipment purchased with funding provided under this contract must be returned to the City of Wichita for disposition.

#### B. Budget

The City shall pay the Agency as hereinafter set out; the maximum of \$28,945.00 for the program described in this contract. Said funding shall be used as follows:

|                                         |                    |
|-----------------------------------------|--------------------|
| Professional Services; Salaries Support | <u>\$28,945.00</u> |
| TOTAL                                   | \$28,945.00        |

#### C. Method of Payment

The Agency agrees that payments under this contract shall be made according to established budgeting, purchasing and accounting procedures of the City of Wichita and HOME. The Agency agrees that all payments under this contract will be on a reimbursement basis. The Agency shall submit a request for reimbursement on a

monthly basis, by no later than the 30<sup>th</sup> of each month. Upon review of the reimbursement request by the Housing Services Department, the City will proceed to make payment directly to the Agency for all eligible and adequately documented expenses.

1. The City and Agency also agree that the categories of expenditures and amounts are estimates and may vary during the course of the contract. Adjustments between existing budget categories can be made administratively. However, changes greater than \$10,000 must be approved by the City Council.
2. The Agency will ensure all costs are eligible according to the approved budget. The original documentation supporting any expenditures made under this agreement will be retained in the Agency's files for five (5) years after the final audit of expenditures made under this contract and throughout the applicable period of affordability. Documentation of eligible costs will include, but is not limited to: vendor invoices, purchase orders, receipts and payroll records. The City shall retain all such documentation for audit purposes.
3. A maximum of 1/8 of the budgeted amount for salaries will be paid out per month for salaries expenses.
4. The Agency may request a cash advance in the amount of no more than 1/8 of the total amount of the contract. Cash advances will be deducted from the total amount of funding provided under this contract.

D. Records and Reports

1. Records shall be maintained documenting performance to be indicated in an annual report. Records are subject to review by the City.
2. **The Agency will provide, for the year ending June 30 of each year, beginning June 30, 2010, and for each year this contract is in effect, an annual report of the HOME funded portion of the program.** The report will consist of a narrative or other description of activities undertaken during the year. Said report shall be due on **July 10** of each year during the contract term.
3. The **Agency** will maintain records documenting receipts of program income and expenditures of the same. Records shall be maintained valuing in-kind services, and donated goods and services, to be reported in the same manner as other annual reports, for a period of 5 years, following the expiration of this contract.

II. Program Evaluation

The City shall evaluate this project based on the objectives stated in Section I.B. of this Exhibit. Failure by the Agency to provide the level of service stated herein may result in a

determination by the City to modify the level of payment to the Agency on a pro rata basis with level of service. The Agency records are subject to review by the City to ensure the accuracy and validity of information reported in monthly progress reports.

**BUDGET**

|                                         |                    |
|-----------------------------------------|--------------------|
| Professional Services; Salaries Support | <u>\$28,945.00</u> |
| TOTAL                                   | \$28,945.00        |

GRANT AGREEMENT

Between

**THE CITY OF WICHITA  
HOUSING SERVICES DEPARTMENT**

A

PARTICIPATING JURISDICTION

And

**Power CDC, Inc.  
(The Agency)**

A

COMMUNITY HOUSING DEVELOPMENT ORGANIZATION

**Operating Support Funding  
2009-2010**

HOME Investment Partnerships  
Program

Housing and Community Services Department  
City of Wichita  
332 N. Riverview  
Wichita, KS 67203  
Phone (316) 268-4688  
Fax (316) 268-4219

No. \_\_\_\_\_

## **AGREEMENT**

THIS CONTRACT, dated to be effective the 17<sup>th</sup> day of November, 2009, by and between the City of Wichita, Kansas (hereinafter referred to as the City) and Power CDC, Inc. (hereinafter referred to as the "Agency").

### WITNESSETH THAT:

WHEREAS, the City is entitled to receive a HOME Investment Partnerships Program Grant (hereinafter referred to as HOME), from the U.S. Department of Housing and Urban Development (hereinafter referred to as the "Department").

WHEREAS, the Agency is desirous of participating in activities eligible under HOME, and further agrees that the beneficiaries of its activities under the program and this agreement are, or will be, individuals or families who meet the income eligibility guidelines of Title 24 CFR Part 92.216/217 as applicable; and

WHEREAS, the purpose of the assistance to be provided under this agreement is specifically authorized by Title 24 CFR Section 92.208; and

WHEREAS, the City deems the activities to be provided by the Agency as consistent with, and supportive of the HOME Investment Partnership Program, and the Agency requires the financial assistance of the City to initiate its activities; and

WHEREAS, the cooperation of the City and the Agency is essential for the successful implementation of an Affordable Housing Program;

NOW, THEREFORE, the contracting parties do mutually agree as follows:

**SECTION 1. SCOPE OF SERVICES.** The Agency must follow the Performance Criteria and Program Description as outlined in Exhibit B. Any programmatic change substantially altering the contract's original intent or financial change in contract amount or line items in the approved budget that is greater than \$10,000 shall require a written contract amendment. The amendment shall be approved by the City Council and shall also be approved and signed by all parties to the original contract.

**SECTION 2. TIME OF PERFORMANCE.** The services of the Agency are to begin November 17, 2009 and end no later than December 31, 2010 and shall be undertaken to accomplish the purposes of this contract.



### SECTION 3. RECORDS, REPORTS AND INSPECTION.

A. Establishment and Maintenance of Records. The Agency shall establish and maintain records as prescribed by the Department, and/or the City, with respect to all matters covered by this contract. Except as otherwise authorized by the Department and/or the City, the Agency shall (Per 24 CFR 92.508) **retain such records for a period of five years following the date final payment is received under this contract.**

B. Documentation of Costs. All costs shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this contract shall be clearly identified and readily accessible.

C. Reports and information. The Agency, at such times and in such forms as the City or its designated and authorized representative(s) may require, shall furnish to the City or its designated and authorized representative(s) such statements, records, reports, data and information as the City may request pertaining to matters covered by this contract.

D. Audits and Inspections. The Agency shall at any time and as often as the Housing and Community Services Department, or the City or the Comptroller General, or the Department of Housing and Urban Development, (HUD) or the HUD Inspector General of the United States may deem necessary, make available all its records and data for the purpose of making audits, reviews, examinations, excerpts and transcriptions.

SECTION 4. CONFLICT OF INTEREST. No owner, Agency or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official or consultant of the owner, Agency or sponsor) whether private, for profit or non-profit (including a Community Housing Development Organization (CHDO) when acting as an owner, Agency or sponsor) may occupy a HOME-assisted affordable unit in a project. This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or Agency of a rental housing project who occupies a housing unit as the project manager or maintenance worker. (24 CFR 92.356 (f)(1)).

EXCEPTIONS: An exception may be granted in accordance and in compliance with 24 CFR 92.356 (f)(2)(I) through (V), and with the City's prior approval.

### SECTION 5. DISCRIMINATION.

A. Discrimination Prohibited. No recipient or proposed recipient of any funds, services or other assistance under the provisions of this contract or any program related to this contract, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this contract on the grounds of race, color, national origin, ancestry, religion, disability, sex or age. (Reference Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352)). For purposes of this section, "program or

activity" is defined as any function conducted by an identifiable administrative unit of the Agency receiving funds pursuant to this contract.

B. The Agency further agrees to implement and comply with the "Revised Non-Discrimination and Equal Employment Opportunity Statement for contracts or agreements" as provided in Exhibit A attached hereto.

C. The Agency will not discriminate against any employee or applicant for employment because of race, color, national origin, sex, or religion, in accordance with Executive Order 11246 – Equal Employment Opportunity, as amended and its implementing regulations at 41 CFR Part 60. If the Agency has fifteen or more employees, the Agency is prohibited from discriminating against any employee or applicant with a disability, in accordance with Title I of the Americans with Disabilities Act of 1990 (ADA). Nondiscrimination notices should be included in all job postings and posted in a visible place in the Agency's office.

#### SECTION 6. EMPLOYMENT OPPORTUNITIES FOR BUSINESSES AND LOWER INCOME PERSONS IN CONNECTION WITH ASSISTED PROJECTS.

A. GENERAL. Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701 u., and Sec. 7 (d), Department of HUD Act, 42 U.S.C. 3535 (d) is applicable to all projects assisted by any Department program in which loans, grants, subsidies or other financial assistance, including HOME Investment Partnerships Program under the Act are provided in aid of housing, urban planning, development, redevelopment or renewal, public or community facilities, and new community developments.

##### B. Assurance of Compliance.

1. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 u (section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

2. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135 and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability that would prevent them from complying with these requirements.

3. The Agency agrees to send to each labor organization or representative of workers with which the owner has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both

employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

4. The Agency agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

5. The Agency will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected, but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

6. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

7. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

8. Every contract or agreement entered into by the Agency that involves funds provided under this contract will have incorporated therein subsection B of Section 6 of this contract.

9. In the event the Agency sells, leases, transfers or otherwise conveys land upon which work in connection with this project is to be performed, the City must be notified in writing, thirty (30) days prior to such action. Further, prior to sale or lease of property purchases, funded under this agreement, the Agency shall include in each contract or subcontract for work on such land, a clause requiring the purchaser, lessee or Agency to assume the same obligations as the Agency for work under subsection B of Section 6 of this contract. Each such purchaser, lessee or Agency shall be relieved of such obligations upon satisfactory completion of all work to be performed under the terms of the redevelopment contract.

**SECTION 7. FEDERAL LABOR STANDARDS PROVISIONS.** Except with respect to the rehabilitation of residential property containing less than twelve units, the Agency and all contractors

and subcontractors engaged under contracts in excess of \$2,000 for the construction, prosecution, completion or repair of any building or work financed in whole or in part with assistance provided under this contract **will comply with the Davis-Bacon Act** (40 U.S.C. 276 a to a-7), as supplemented by Department of Labor (DOL) regulations (29 CFR, Part 5), the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented in DOL regulations (29 CFR, Part 3), sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by DOL regulations (29 CFR, Part 5), and the regulations issued pursuant thereto. **The Agency shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions consistent with applicable Federal Labor Standards.** No contracts under this section shall be awarded to any contractors or subcontractors debarred for violating Federal Labor Standards Provisions. **This Project does not include construction, prosecution, completion or repair of any building and is exempt from Davis-Bacon Act wage requirements.**

The Agency shall take affirmative action to ensure that applicants for employment are employed, contractors or subcontractors receive contracts, and all employees are treated, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following:

employment, recruitment or recruitment advertising,  
contracting or subcontracting, promotion, demotion,  
transfer, layoff, termination, rates of pay or other  
forms of compensation, and selection for training,  
including apprenticeship.

The Agency shall incorporate the foregoing requirements of this paragraph in all of its contracts, except those exempt by law, and will require all of its contractors to incorporate such requirements in all subcontracts.

#### SECTION 503 AFFIRMATIVE ACTION FOR QUALIFIED INDIVIDUALS WITH DISABILITIES:

The Agency and any subcontractors will comply with the provisions of Section 503 of the Rehabilitation Act of 1973, if the funding award of their Agreement is \$2,500 or more, including, but not limited, to the following:

a) The Agency will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified.

b) The Agency agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices, including, but not limited to, the following:

Employment, recruitment or recruitment advertising, contracting or subcontracting, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

c) **The Agency agrees to post in conspicuous places, within administrative office and warehouse facilities available to employees and applicants for employment, notices, which make reference to the Agency's compliance with The Rehabilitation Act.** Such notices shall state the Agency's obligation under the law not to discriminate on the basis of physical or mental disability and to take affirmative action to employ and advance in employment qualified individuals with disabilities.

SECTION 8. COMPLIANCE WITH LOCAL LAWS. All parties shall comply with all applicable laws, ordinances, codes and regulations of the State of Kansas and local governments.

SECTION 9. ASSIGNABILITY. The Agency shall not assign any interest in this contract without prior written consent of the City.

SECTION 10. POLITICAL ACTIVITY PROHIBITED.

A. None of the funds, materials, property or services provided directly or indirectly under this contract shall be used for partisan political activity.

B. The funds provided under this contract shall not be engaged in any way in contravention of Chapter 15 of Title 5, U.S.C.

SECTION 11. LOBBYING PROHIBITED. None of the funds provided under this contract shall be used for lobbying and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America or the Legislature of the State of Kansas.

SECTION 12. PAYMENTS.

A. Compensation and Method of Payment. Compensation and method of payment to the Agency, relative to conducting the operations of the project activities and services as herein described, will be carried out as specified in Exhibit B attached hereto, and will be administered under the established accounting and fiscal policies of the City of Wichita.

B. Total Payments. Total Payment to the Agency will not exceed \$18,420 as referenced in Exhibit B.

C. Restriction on Disbursements. No Entitlement Funds shall be disbursed to the Agency or contractor except pursuant to a written contract, which incorporates by reference the general conditions of this contract.

D. Unearned Payments. Under this contract unearned payments may be suspended or terminated if the entitlement funds to the City of Wichita under the HOME Investment Partnerships Program (24 CFR Part 92) are suspended or terminated.

SECTION 13. TERMINATION CLAUSE. Upon breach of the contract by the Agency, the City, by giving written notification, may terminate this contract immediately. A breach shall include, but not be limited to, failure to comply with any or all items contained within Section 1 through Section 26, Exhibits and/or provisions of any subsequent contractual amendments executed relative to this contract. In the event of a breach of contract, the Agency agrees to re-pay any HOME funds advanced under this agreement.

SECTION 14. AMENDMENTS.

A. To provide necessary flexibility for the most effective execution of this project, whenever both the City and the Agency mutually agree, changes to this contract may be effected by placing them in written form and incorporating them into this contract.

B. Programmatic changes substantially altering the contract's original intent or financial changes in contract amount or line items in the approved budget (Exhibit C) that are greater than \$10,000 shall require a written contract amendment. The amendment must be approved by the City Council and must also be approved and signed by all parties to the original contract.

SECTION 15. POLLUTION STANDARDS. In the event the grand total of Exhibit C is in excess of \$100,000, the Agency agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 185, et seq.) and the Federal Water Pollution Control Act (33 U.S.C.1251, et seq.), as amended.

SECTION 16. ARCHITECTURAL BARRIERS. Every building or facility (other than a private residential structure) designed, constructed or altered with funds provided pursuant to this contract shall be designed, altered or constructed in accordance with the standards issued under the Architectural Barriers Act of 1968 (42 USC 4151 et. seq.), as amended, and the minimum guidelines and requirements issued by the Architectural and Transportation Compliance Board pursuant to Section 502 (b.) (7.) of the Rehabilitation Act of 1973 (29 USC 792 (b.) (7.) as amended.

The Section 504 implementing regulations (24 CFR Part 8) apply to this project. Newly constructed or rehabilitated housing for purchase or single-family housing developed with Federal funds must be made accessible upon the request of the prospective buyer if the nature of the prospective occupant's disability so requires. Should a prospective buyer request a modification to make a unit accessible, the owner/Agency must work with the buyer to provide specific features that meet the need(s) of the prospective homebuyer/occupant. If the design features that are needed for the buyer are design features that are covered in the Uniform Federal Accessibility Standards (UFAS), those features must comply with the UFAS standard. The Agency shall be permitted to depart from the standard in order to have the buyer/occupant's needs met.

Multi-family dwellings must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-19), and Section 504 of the Rehabilitation Act of 1973, as applicable.

SECTION 17. ANTI-TRUST LITIGATION. For good cause, and as consideration for executing this contract, the Agency, acting herein by and through its authorized agent, hereby conveys, sells, assigns and transfers to the City of Wichita all right, title and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Kansas, relating to the particular product, products, or services purchased or acquired by the Agency pursuant to this contract.

SECTION 18. UNIFORM GRANT ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES. During the administration of this contract, the Agency shall comply with 24 CFR 84.21, Standards for financial management systems, as follows:

- (a) Agency is required to relate financial data to performance data and develop unit cost information whenever practical.
- (b) Agency's financial management systems shall provide for the following:
  - (1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in §84.52. If a recipient maintains its records on other than an accrual basis, the Agency shall not be required to establish an accrual accounting system. The Agency may develop such accrual data for reports on the basis of an analysis of the documentation on hand.
  - (2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.
  - (3) Effective control over and accountability for all funds, property and other assets. The Agency shall adequately safeguard all such assets and assure they are used solely for authorized purposes.
  - (4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.
  - (5) Written procedures to minimize the time elapsing between the transfer of funds to the Agency from the City, and the issuance or redemption of checks, warrants or payments by other means for program purposes by the Agency. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101-453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

- (6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.
- (7) Accounting records including cost accounting records that are supported by source documentation.
- (c) Where the City guarantees or insures the repayment of money borrowed by the Agency, The City, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the City.
- (d) The City may require adequate fidelity bond coverage where the Agency lacks sufficient coverage to protect the City's interest.
- (e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States . "

SECTION 19. RENEGOTIATION. This contract may be renegotiated in the event alternate sources of funding become available during the term of the contract.

SECTION 20. LEAD-BASED PAINT POISONING PREVENTION. The Agency will comply with the lead-based paint provisions at 24 CFR Part 35 and at 24 CFR 570.608, and Title X of the Housing and Development Act of 1992. Compliance will include all activities required by these regulations. The Agency also agrees to document each client file with regard to these provisions, and action(s) taken if required. A copy of the current HUD Lead-Based Paint Certification will be retained in the file of each client assisted with HOME funds under this contract. The Agency will comply with the Lead-Based paint Poisoning Prevention Act (42 U.S.C. 4821 et seq.) and 24 CFR part 35. The Project will comply with section 92.355 of the HOME rule. The Agency will also comply with the lead-based paint provisions of section 982.401(j) and the Lead-Based Paint provisions of the Section 8 Housing Quality Standards (HQS), irrespective of the applicable property standard under section 92.251. The Agency will comply with sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (P.L. 102-550), and the regulations found at 24 CFR part 35.

SECTION 21. TERMINATION FOR CONVENIENCE. The City may terminate this contract at any time by a notice in writing from the City to the Agency. If the contract is terminated by the City as provided herein, the Agency will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Agency covered by this contract, less payments of compensation previously made: Provided, however, that if less than sixty (60) percent of the services covered by this contract have been performed upon the effective date of such termination, the Agency shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expense (not otherwise reimbursed under this contract) incurred by the Agency during the contract period which are directly attributable to the uncompleted portion of the services covered by this contract.



If this contract is terminated due to the fault of the Agency, Section 13 herein relative to termination shall apply.

SECTION 22. REFUND OF INCOME. All income earned by a project as a result of entitlement funds shall be accounted for and refunded to the City quarterly or used to offset project cost unless otherwise specified in Exhibit B. Earned income shall be defined as fees received, subsidies, sales and any program income.

SECTION 23. REVERSION OF ASSETS. In the event this contract is terminated, due to breach, convenience, or expiration, the Agency agrees to transfer ownership of any real property purchased with HOME funds under this agreement, to the City. This clause shall not apply if the project has been completed as contractually agreed, and the applicable affordability period has expired.

SECTION 24. OTHER FEDERAL REGULATIONS. Activities funded with HOME funds must comply with all of the following federal laws, executive orders and regulations pertaining to fair housing and equal opportunity, as follows:

Title VIII of the Civil Rights Act of 1968 (Fair Housing Act, (42 U.S.C. 3601-3620) As Amended, and implementing regulations at 24 CFR 100. The Fair Housing Act prohibits discrimination in the sale, rental and financing of dwellings and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status, and disability.

Title VI of the Civil Rights Act of 1964, As Amended (42 U.S.C. 2000d et seq.). This law prohibits discrimination on the basis of race, color, and national origin in all Federally-assisted programs.

The Age Discrimination Act of 1975, As Amended (42 U.S.C. 6101), and implementing regulations at 24 CFR Part 146. This law prohibits age discrimination based on disability in all programs or activities operated by recipients of Federal financial assistance.

Equal Opportunity in Housing (Executive Order 11063, and Executive Order 12259), and implementing regulations at 24 CFR Part 107. These Executive Orders prohibit discrimination against individuals on the basis of race, color, religion, sex, and national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with Federal funds.

Title II of the Americans with Disabilities Act (ADA). Title II of ADA prohibits discrimination against persons with disabilities in all programs, activities, and services of a public entity. (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225)

SECTION 25. DISBURSEMENT OF HOME FUNDS. The Agency may not request disbursement of HOME funds under this agreement until the funds are needed for payment of eligible costs. Unless otherwise approved by the Housing Services Department, payments to the

Agency will be provided on a reimbursement basis. The amount of each request will be limited to the amount needed.

SECTION 26. APPENDICES. All exhibits referenced in this contract, all amendments mutually agreed upon, and modifications made by both parties are hereby incorporated as though fully set forth herein.

Exhibit A: Revised Non-Discrimination & Equal Employment  
Opportunity Statement

Exhibit B: Performance Criteria and Program Description

Exhibit C: Budget

**Power CDC, Inc.  
(the Agency)**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title of Officer

\_\_\_\_\_  
Date

**CITY OF WICHITA, at the Direction of the City Council**

By \_\_\_\_\_  
Carl Brewer, Mayor

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

\_\_\_\_\_  
Date

Approved as to Form:

\_\_\_\_\_  
Gary E. Rebenstorf, City Attorney  
And Director of Law of the  
City of Wichita

\_\_\_\_\_  
Date

**REVISED NON-DISCRIMINATION AND  
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM  
REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
  - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
  - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
  - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
  - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
  2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
  3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
  4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

## Exhibit B

### PERFORMANCE CRITERIA AND CONTRACT OBJECTIVES

It is mutually agreed and understood by the City of Wichita and the Agency, hereinafter referred to as the "City" and "Agency," respectively, that execution of this contract obligates the Agency to the following performance requirements.

HOME operating funds in the amount of \$18,420 shall be used for the operating expenses of the Agency. Eligible costs are outlined in 24 CFR Part 92, dated September 16, 1996 as amended, as specifically outlined at 24 CFR 92.208.

#### I. Administration

The Agency's Executive Director will supervise operations and administration on a day-to-day basis. The Agency's Board of Directors is ultimately responsible for program administration.

#### A. Funding

It is mutually agreed by and between the City and the Agency that the total HOME funds available to the Agency will be \$18,420, to provide operational support for HOME-related, single-family housing development activities in the City's Local Investment Areas. Specific use of the funding to be set forth in the sections entitled, Budget and Method of Payment. Funding provided under this contract incorporates the funding application issued in connection with the funding, and the Agency's response, unless superceded by this contract. Equipment purchased with funding provided under this contract must be returned to the City of Wichita for disposition.

#### B. Budget

The City shall pay the Agency as hereinafter set out; the maximum of \$18,420.00 for the program described in this contract. Said funding shall be used as follows:

|                                         |                    |
|-----------------------------------------|--------------------|
| Professional Services; Salaries Support | <u>\$18,420.00</u> |
| TOTAL                                   | \$18,420.00        |

#### C. Method of Payment

The Agency agrees that payments under this contract shall be made according to established budgeting, purchasing and accounting procedures of the City of Wichita and HOME. The Agency agrees that all payments under this contract will be on a reimbursement basis. The Agency shall submit a request for reimbursement on a

monthly basis, by no later than the 30<sup>th</sup> of each month. Upon review of the reimbursement request by the Housing Services Department, the City will proceed to make payment directly to the Agency for all eligible and adequately documented expenses.

1. The City and Agency also agree that the categories of expenditures and amounts are estimates and may vary during the course of the contract. Adjustments between existing budget categories can be made administratively. However, changes greater than \$10,000 must be approved by the City Council.

2. The Agency will ensure all costs are eligible according to the approved budget. The original documentation supporting any expenditures made under this agreement will be retained in the Agency's files for five (5) years after the final audit of expenditures made under this contract and throughout the applicable period of affordability. Documentation of eligible costs will include, but is not limited to: vendor invoices, purchase orders, receipts and payroll records. The City shall retain all such documentation for audit purposes.

3. A maximum of 1/8 of the budgeted amount for salaries will be paid out per month for salaries expenses.

4. The Agency may request a cash advance in the amount of no more than 1/8 of the total amount of the contract. Cash advances will be deducted from the total amount of funding provided under this contract.

D. Records and Reports

1. Records shall be maintained documenting performance to be indicated in an annual report. Records are subject to review by the City.

2. **The Agency will provide, for the year ending June 30 of each year, beginning June 30, 2010, and for each year this contract is in effect, an annual report of the HOME funded portion of the program.** The report will consist of a narrative or other description of activities undertaken during the year. Said report shall be due on **July 10** of each year during the contract term.

3. The **Agency** will maintain records documenting receipts of program income and expenditures of the same. Records shall be maintained valuing in-kind services, and donated goods and services, to be reported in the same manner as other annual reports, for a period of 5 years, following the expiration of this contract.

II. Other Program Requirements

A. The Agency shall comply with the applicable provisions of OMB Circular A-110, Attachment F, Standards for Financial Management Systems, requiring independent



financial and programmatic audits not less frequently than every two years. In addition to the financial and programmatic audit, the audit shall indicate whether the organization has complied with laws and regulations that may have a material effect on its financial statements and on each Federal assistance program reviewed. Other federal requirements may apply, as outlined in Section 18 of this contract.

### III. Program Evaluation

The City shall evaluate this project based on the objectives stated in Section I.B. of this Exhibit. Failure by the Agency to provide the level of service stated herein may result in a determination by the City to modify the level of payment to the Agency on a pro rata basis with level of service. The Agency records are subject to review by the City to ensure the accuracy and validity of information reported in monthly progress reports.

**BUDGET**

|                                         |                    |
|-----------------------------------------|--------------------|
| Professional Services; Salaries Support | <u>\$18,420.00</u> |
| TOTAL                                   | \$18,420.00        |

GRANT AGREEMENT

Between

**THE CITY OF WICHITA  
HOUSING SERVICES DEPARTMENT**

A

PARTICIPATING JURISDICTION

And

**Community Housing Services, Inc.  
(The Agency)**

A

COMMUNITY HOUSING DEVELOPMENT ORGANIZATION

**Operating Support Funding  
2009-2010**

HOME Investment Partnerships  
Program

Housing and Community Services Department  
City of Wichita  
332 N. Riverview  
Wichita, KS 67203  
Phone (316) 268-4688  
Fax (316) 268-4219

No. \_\_\_\_\_

## **AGREEMENT**

THIS CONTRACT, dated to be effective the 17<sup>th</sup> day of November, 2009, by and between the City of Wichita, Kansas (hereinafter referred to as the City) and Community Housing Services, Inc. (hereinafter referred to as the "Agency").

WITNESSETH THAT:

WHEREAS, the City is entitled to receive a HOME Investment Partnerships Program Grant (hereinafter referred to as HOME), from the U.S. Department of Housing and Urban Development (hereinafter referred to as the "Department").

WHEREAS, the Agency is desirous of participating in activities eligible under HOME, and further agrees that the beneficiaries of its activities under the program and this agreement are, or will be, individuals or families who meet the income eligibility guidelines of Title 24 CFR Part 92.216/217 as applicable; and

WHEREAS, the purpose of the assistance to be provided under this agreement is specifically authorized by Title 24 CFR Section 92.208; and

WHEREAS, the City deems the activities to be provided by the Agency as consistent with, and supportive of the HOME Investment Partnership Program, and the Agency requires the financial assistance of the City to initiate its activities; and

WHEREAS, the cooperation of the City and the Agency is essential for the successful implementation of an Affordable Housing Program;

NOW, THEREFORE, the contracting parties do mutually agree as follows:

SECTION 1. SCOPE OF SERVICES. The Agency must follow the Performance Criteria and Program Description as outlined in Exhibit B. Any programmatic change substantially altering the contract's original intent or financial change in contract amount or line items in the approved budget that is greater than \$10,000 shall require a written contract amendment. The amendment shall be approved by the City Council and shall also be approved and signed by all parties to the original contract.

SECTION 2. TIME OF PERFORMANCE. The services of the Agency are to begin November 17, 2009 and end no later than December 31, 2010 and shall be undertaken to accomplish the purposes of this contract.

### SECTION 3. RECORDS, REPORTS AND INSPECTION.

A. Establishment and Maintenance of Records. The Agency shall establish and maintain records as prescribed by the Department, and/or the City, with respect to all matters covered by this contract. Except as otherwise authorized by the Department and/or the City, the Agency shall (Per 24 CFR 92.508) **retain such records for a period of five years following the date final payment is received under this contract.**

B. Documentation of Costs. All costs shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this contract shall be clearly identified and readily accessible.

C. Reports and information. The Agency, at such times and in such forms as the City or its designated and authorized representative(s) may require, shall furnish to the City or its designated and authorized representative(s) such statements, records, reports, data and information as the City may request pertaining to matters covered by this contract.

D. Audits and Inspections. The Agency shall at any time and as often as the Housing and Community Services Department, or the City or the Comptroller General, or the Department of Housing and Urban Development, (HUD) or the HUD Inspector General of the United States may deem necessary, make available all its records and data for the purpose of making audits, reviews, examinations, excerpts and transcriptions.

SECTION 4. CONFLICT OF INTEREST. No owner, Agency or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official or consultant of the owner, Agency or sponsor) whether private, for profit or non-profit (including a Community Housing Development Organization (CHDO) when acting as an owner, Agency or sponsor) may occupy a HOME-assisted affordable unit in a project. This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or Agency of a rental housing project who occupies a housing unit as the project manager or maintenance worker. (24 CFR 92.356 (f)(1)).

EXCEPTIONS: An exception may be granted in accordance and in compliance with 24 CFR 92.356 (f)(2)(I) through (V), and with the City's prior approval.

### SECTION 5. DISCRIMINATION.

A. Discrimination Prohibited. No recipient or proposed recipient of any funds, services or other assistance under the provisions of this contract or any program related to this contract, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this contract on the grounds of race, color, national origin, ancestry, religion, disability, sex or age. (Reference Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352)). For purposes of this section, "program or

activity" is defined as any function conducted by an identifiable administrative unit of the Agency receiving funds pursuant to this contract.

B. The Agency further agrees to implement and comply with the "Revised Non-Discrimination and Equal Employment Opportunity Statement for contracts or agreements" as provided in Exhibit A attached hereto.

C. The Agency will not discriminate against any employee or applicant for employment because of race, color, national origin, sex, or religion, in accordance with Executive Order 11246 – Equal Employment Opportunity, as amended and its implementing regulations at 41 CFR Part 60. If the Agency has fifteen or more employees, the Agency is prohibited from discriminating against any employee or applicant with a disability, in accordance with Title I of the Americans with Disabilities Act of 1990 (ADA). Nondiscrimination notices should be included in all job postings and posted in a visible place in the Agency's office.

#### SECTION 6. EMPLOYMENT OPPORTUNITIES FOR BUSINESSES AND LOWER INCOME PERSONS IN CONNECTION WITH ASSISTED PROJECTS.

A. GENERAL. Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701 u., and Sec. 7 (d), Department of HUD Act, 42 U.S.C. 3535 (d) is applicable to all projects assisted by any Department program in which loans, grants, subsidies or other financial assistance, including HOME Investment Partnerships Program under the Act are provided in aid of housing, urban planning, development, redevelopment or renewal, public or community facilities, and new community developments.

##### B. Assurance of Compliance.

1. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 u (section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

2. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135 and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability that would prevent them from complying with these requirements.

3. The Agency agrees to send to each labor organization or representative of workers with which the owner has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both

employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

4. The Agency agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

5. The Agency will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected, but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

6. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

7. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

8. Every contract or agreement entered into by the Agency that involves funds provided under this contract will have incorporated therein subsection B of Section 6 of this contract.

9. In the event the Agency sells, leases, transfers or otherwise conveys land upon which work in connection with this project is to be performed, the City must be notified in writing, thirty (30) days prior to such action. Further, prior to sale or lease of property purchases, funded under this agreement, the Agency shall include in each contract or subcontract for work on such land, a clause requiring the purchaser, lessee or Agency to assume the same obligations as the Agency for work under subsection B of Section 6 of this contract. Each such purchaser, lessee or Agency shall be relieved of such obligations upon satisfactory completion of all work to be performed under the terms of the redevelopment contract.

**SECTION 7. FEDERAL LABOR STANDARDS PROVISIONS.** Except with respect to the rehabilitation of residential property containing less than twelve units, the Agency and all contractors

and subcontractors engaged under contracts in excess of \$2,000 for the construction, prosecution, completion or repair of any building or work financed in whole or in part with assistance provided under this contract **will comply with the Davis-Bacon Act** (40 U.S.C. 276 a to a-7), as supplemented by Department of Labor (DOL) regulations (29 CFR, Part 5), the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented in DOL regulations (29 CFR, Part 3), sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by DOL regulations (29 CFR, Part 5), and the regulations issued pursuant thereto. **The Agency shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions consistent with applicable Federal Labor Standards.** No contracts under this section shall be awarded to any contractors or subcontractors debarred for violating Federal Labor Standards Provisions. **This Project does not include construction, prosecution, completion or repair of any building and is exempt from Davis-Bacon Act wage requirements.**

The Agency shall take affirmative action to ensure that applicants for employment are employed, contractors or subcontractors receive contracts, and all employees are treated, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following:

employment, recruitment or recruitment advertising,  
contracting or subcontracting, promotion, demotion,  
transfer, layoff, termination, rates of pay or other  
forms of compensation, and selection for training,  
including apprenticeship.

The Agency shall incorporate the foregoing requirements of this paragraph in all of its contracts, except those exempt by law, and will require all of its contractors to incorporate such requirements in all subcontracts.

#### SECTION 503 AFFIRMATIVE ACTION FOR QUALIFIED INDIVIDUALS WITH DISABILITIES:

The Agency and any subcontractors will comply with the provisions of Section 503 of the Rehabilitation Act of 1973, if the funding award of their Agreement is \$2,500 or more, including, but not limited, to the following:

a) The Agency will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified.

b) The Agency agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices, including, but not limited to, the following:



Employment, recruitment or recruitment advertising, contracting or subcontracting, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

c) **The Agency agrees to post in conspicuous places, within administrative office and warehouse facilities available to employees and applicants for employment, notices, which make reference to the Agency's compliance with The Rehabilitation Act.** Such notices shall state the Agency's obligation under the law not to discriminate on the basis of physical or mental disability and to take affirmative action to employ and advance in employment qualified individuals with disabilities.

SECTION 8. COMPLIANCE WITH LOCAL LAWS. All parties shall comply with all applicable laws, ordinances, codes and regulations of the State of Kansas and local governments.

SECTION 9. ASSIGNABILITY. The Agency shall not assign any interest in this contract without prior written consent of the City.

SECTION 10. POLITICAL ACTIVITY PROHIBITED.

A. None of the funds, materials, property or services provided directly or indirectly under this contract shall be used for partisan political activity.

B. The funds provided under this contract shall not be engaged in any way in contravention of Chapter 15 of Title 5, U.S.C.

SECTION 11. LOBBYING PROHIBITED. None of the funds provided under this contract shall be used for lobbying and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America or the Legislature of the State of Kansas.

SECTION 12. PAYMENTS.

A. Compensation and Method of Payment. Compensation and method of payment to the Agency, relative to conducting the operations of the project activities and services as herein described, will be carried out as specified in Exhibit B attached hereto, and will be administered under the established accounting and fiscal policies of the City of Wichita.

B. Total Payments. Total Payment to the Agency will not exceed \$2,635 as referenced in Exhibit B.

C. Restriction on Disbursements. No Entitlement Funds shall be disbursed to the Agency or contractor except pursuant to a written contract, which incorporates by reference the general conditions of this contract.

D. Unearned Payments. Under this contract unearned payments may be suspended or terminated if the entitlement funds to the City of Wichita under the HOME Investment Partnerships Program (24 CFR Part 92) are suspended or terminated.

SECTION 13. TERMINATION CLAUSE. Upon breach of the contract by the Agency, the City, by giving written notification, may terminate this contract immediately. A breach shall include, but not be limited to, failure to comply with any or all items contained within Section 1 through Section 26, Exhibits and/or provisions of any subsequent contractual amendments executed relative to this contract. In the event of a breach of contract, the Agency agrees to re-pay any HOME funds advanced under this agreement.

SECTION 14. AMENDMENTS.

A. To provide necessary flexibility for the most effective execution of this project, whenever both the City and the Agency mutually agree, changes to this contract may be effected by placing them in written form and incorporating them into this contract.

B. Programmatic changes substantially altering the contract's original intent or financial changes in contract amount or line items in the approved budget (Exhibit C) that are greater than \$10,000 shall require a written contract amendment. The amendment must be approved by the City Council and must also be approved and signed by all parties to the original contract.

SECTION 15. POLLUTION STANDARDS. In the event the grand total of Exhibit C is in excess of \$100,000, the Agency agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 185, et seq.) and the Federal Water Pollution Control Act (33 U.S.C.1251, et seq.), as amended.

SECTION 16. ARCHITECTURAL BARRIERS. Every building or facility (other than a private residential structure) designed, constructed or altered with funds provided pursuant to this contract shall be designed, altered or constructed in accordance with the standards issued under the Architectural Barriers Act of 1968 (42 USC 4151 et. seq.), as amended, and the minimum guidelines and requirements issued by the Architectural and Transportation Compliance Board pursuant to Section 502 (b.) (7.) of the Rehabilitation Act of 1973 (29 USC 792 (b.) (7.) as amended.

The Section 504 implementing regulations (24 CFR Part 8) apply to this project. Newly constructed or rehabilitated housing for purchase or single-family housing developed with Federal funds must be made accessible upon the request of the prospective buyer if the nature of the prospective occupant's disability so requires. Should a prospective buyer request a modification to make a unit accessible, the owner/Agency must work with the buyer to provide specific features that meet the need(s) of the prospective homebuyer/occupant. If the design features that are needed for the buyer are design features that are covered in the Uniform Federal Accessibility Standards (UFAS), those features must comply with the UFAS standard. The Agency shall be permitted to depart from the standard in order to have the buyer/occupant's needs met.

Multi-family dwellings must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-19), and Section 504 of the Rehabilitation Act of 1973, as applicable.

SECTION 17. ANTI-TRUST LITIGATION. For good cause, and as consideration for executing this contract, the Agency, acting herein by and through its authorized agent, hereby conveys, sells, assigns and transfers to the City of Wichita all right, title and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Kansas, relating to the particular product, products, or services purchased or acquired by the Agency pursuant to this contract.

SECTION 18. UNIFORM GRANT ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES. During the administration of this contract, the Agency shall comply with 24 CFR 84.21, Standards for financial management systems, as follows:

- (a) Agency is required to relate financial data to performance data and develop unit cost information whenever practical.
- (b) Agency's financial management systems shall provide for the following:
  - (1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in §84.52. If a recipient maintains its records on other than an accrual basis, the Agency shall not be required to establish an accrual accounting system. The Agency may develop such accrual data for reports on the basis of an analysis of the documentation on hand.
  - (2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.
  - (3) Effective control over and accountability for all funds, property and other assets. The Agency shall adequately safeguard all such assets and assure they are used solely for authorized purposes.
  - (4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.
  - (5) Written procedures to minimize the time elapsing between the transfer of funds to the Agency from the City, and the issuance or redemption of checks, warrants or payments by other means for program purposes by the Agency. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101-453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

- (6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.
  - (7) Accounting records including cost accounting records that are supported by source documentation.
- (c) Where the City guarantees or insures the repayment of money borrowed by the Agency, The City, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the City.
- (d) The City may require adequate fidelity bond coverage where the Agency lacks sufficient coverage to protect the City's interest.
- (e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States . "

SECTION 19. RENEGOTIATION. This contract may be renegotiated in the event alternate sources of funding become available during the term of the contract.

SECTION 20. LEAD-BASED PAINT POISONING PREVENTION. The Agency will comply with the lead-based paint provisions at 24 CFR Part 35 and at 24 CFR 570.608, and Title X of the Housing and Development Act of 1992. Compliance will include all activities required by these regulations. The Agency also agrees to document each client file with regard to these provisions, and action(s) taken if required. A copy of the current HUD Lead-Based Paint Certification will be retained in the file of each client assisted with HOME funds under this contract. The Agency will comply with the Lead-Based paint Poisoning Prevention Act (42 U.S.C. 4821 et seq.) and 24 CFR part 35. The Project will comply with section 92.355 of the HOME rule. The Agency will also comply with the lead-based paint provisions of section 982.401(j) and the Lead-Based Paint provisions of the Section 8 Housing Quality Standards (HQS), irrespective of the applicable property standard under section 92.251. The Agency will comply with sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (P.L. 102-550), and the regulations found at 24 CFR part 35.

SECTION 21. TERMINATION FOR CONVENIENCE. The City may terminate this contract at any time by a notice in writing from the City to the Agency. If the contract is terminated by the City as provided herein, the Agency will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Agency covered by this contract, less payments of compensation previously made: Provided, however, that if less than sixty (60) percent of the services covered by this contract have been performed upon the effective date of such termination, the Agency shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expense (not otherwise reimbursed under this contract) incurred by the Agency during the contract period which are directly attributable to the uncompleted portion of the services covered by this contract.

If this contract is terminated due to the fault of the Agency, Section 13 herein relative to termination shall apply.

SECTION 22. REFUND OF INCOME. All income earned by a project as a result of entitlement funds shall be accounted for and refunded to the City quarterly or used to offset project cost unless otherwise specified in Exhibit B. Earned income shall be defined as fees received, subsidies, sales and any program income.

SECTION 23. REVERSION OF ASSETS. In the event this contract is terminated, due to breach, convenience, or expiration, the Agency agrees to transfer ownership of any real property purchased with HOME funds under this agreement, to the City. This clause shall not apply if the project has been completed as contractually agreed, and the applicable affordability period has expired.

SECTION 24. OTHER FEDERAL REGULATIONS. Activities funded with HOME funds must comply with all of the following federal laws, executive orders and regulations pertaining to fair housing and equal opportunity, as follows:

Title VIII of the Civil Rights Act of 1968 (Fair Housing Act, (42 U.S.C. 3601-3620) As Amended, and implementing regulations at 24 CFR 100. The Fair Housing Act prohibits discrimination in the sale, rental and financing of dwellings and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status, and disability.

Title VI of the Civil Rights Act of 1964, As Amended (42 U.S.C. 2000d et seq.). This law prohibits discrimination on the basis of race, color, and national origin in all Federally-assisted programs.

The Age Discrimination Act of 1975, As Amended (42 U.S.C. 6101), and implementing regulations at 24 CFR Part 146. This law prohibits age discrimination based on disability in all programs or activities operated by recipients of Federal financial assistance.

Equal Opportunity in Housing (Executive Order 11063, and Executive Order 12259), and implementing regulations at 24 CFR Part 107. These Executive Orders prohibit discrimination against individuals on the basis of race, color, religion, sex, and national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with Federal funds.

Title II of the Americans with Disabilities Act (ADA). Title II of ADA prohibits discrimination against persons with disabilities in all programs, activities, and services of a public entity. (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225)

SECTION 25. DISBURSEMENT OF HOME FUNDS. The Agency may not request disbursement of HOME funds under this agreement until the funds are needed for payment of eligible costs. Unless otherwise approved by the Housing Services Department, payments to the

Agency will be provided on a reimbursement basis. The amount of each request will be limited to the amount needed.

SECTION 26. APPENDICES. All exhibits referenced in this contract, all amendments mutually agreed upon, and modifications made by both parties are hereby incorporated as though fully set forth herein.

Exhibit A: Revised Non-Discrimination & Equal Employment  
Opportunity Statement

Exhibit B: Performance Criteria and Program Description

Exhibit C: Budget

**Community Housing Services, Inc.  
(the Agency)**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title of Officer

\_\_\_\_\_  
Date

**CITY OF WICHITA, at the Direction of the City Council**

By \_\_\_\_\_  
Carl Brewer, Mayor

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

\_\_\_\_\_  
Date

Approved as to Form:

\_\_\_\_\_  
Gary E. Rebenstorf, City Attorney  
And Director of Law of the  
City of Wichita

\_\_\_\_\_  
Date

**REVISED NON-DISCRIMINATION AND  
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM  
REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
  - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
  - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
  - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
  - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;



5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
  2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
  3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
  4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

## Exhibit B

### PERFORMANCE CRITERIA AND CONTRACT OBJECTIVES

It is mutually agreed and understood by the City of Wichita and the Agency, hereinafter referred to as the "City" and "Agency," respectively, that execution of this contract obligates the Agency to the following performance requirements.

HOME operating funds in the amount of \$2,635 shall be used for the operating expenses of the Agency. Eligible costs are outlined in 24 CFR Part 92, dated September 16, 1996 as amended, as specifically outlined at 24 CFR 92.208.

#### I. Administration

The Agency's Executive Director will supervise operations and administration on a day-to-day basis. The Agency's Board of Directors is ultimately responsible for program administration.

#### A. Funding

It is mutually agreed by and between the City and the Agency that the total HOME funds available to the Agency will be \$2,635, to provide operational support for HOME-related, single-family housing development activities in the City's Local Investment Areas. Specific use of the funding to be set forth in the sections entitled, Budget and Method of Payment. Funding provided under this contract incorporates the funding application issued in connection with the funding, and the Agency's response, unless superceded by this contract. Equipment purchased with funding provided under this contract must be returned to the City of Wichita for disposition.

#### B. Budget

The City shall pay the Agency as hereinafter set out; the maximum of \$2,635.00 for the program described in this contract. Said funding shall be used as follows:

|                                         |                   |
|-----------------------------------------|-------------------|
| Professional Services; Salaries Support | <u>\$2,635.00</u> |
| TOTAL                                   | \$2,635.00        |

#### C. Method of Payment

The Agency agrees that payments under this contract shall be made according to established budgeting, purchasing and accounting procedures of the City of Wichita and HOME. The Agency agrees that all payments under this contract will be on a reimbursement basis. The Agency shall submit a request for reimbursement on a

monthly basis, by no later than the 30<sup>th</sup> of each month. Upon review of the reimbursement request by the Housing Services Department, the City will proceed to make payment directly to the Agency for all eligible and adequately documented expenses.

1. The City and Agency also agree that the categories of expenditures and amounts are estimates and may vary during the course of the contract. Adjustments between existing budget categories can be made administratively. However, changes greater than \$10,000 must be approved by the City Council.

2. The Agency will ensure all costs are eligible according to the approved budget. The original documentation supporting any expenditures made under this agreement will be retained in the Agency's files for five (5) years after the final audit of expenditures made under this contract and throughout the applicable period of affordability. Documentation of eligible costs will include, but is not limited to: vendor invoices, purchase orders, receipts and payroll records. The City shall retain all such documentation for audit purposes.

3. A maximum of 1/8 of the budgeted amount for salaries will be paid out per month for salaries expenses.

4. The Agency may request a cash advance in the amount of no more than 1/8 of the total amount of the contract. Cash advances will be deducted from the total amount of funding provided under this contract.

D. Records and Reports

1. Records shall be maintained documenting performance to be indicated in an annual report. Records are subject to review by the City.

2. **The Agency will provide, for the year ending June 30 of each year, beginning June 30, 2010, and for each year this contract is in effect, an annual report of the HOME funded portion of the program.** The report will consist of a narrative or other description of activities undertaken during the year. Said report shall be due on **July 10** of each year during the contract term.

3. The **Agency** will maintain records documenting receipts of program income and expenditures of the same. Records shall be maintained valuing in-kind services, and donated goods and services, to be reported in the same manner as other annual reports, for a period of 5 years, following the expiration of this contract.

II. Other Program Requirements

A. The Agency shall comply with the applicable provisions of OMB Circular A-110, Attachment F, Standards for Financial Management Systems, requiring independent

financial and programmatic audits not less frequently than every two years. In addition to the financial and programmatic audit, the audit shall indicate whether the organization has complied with laws and regulations that may have a material effect on its financial statements and on each Federal assistance program reviewed. Other federal requirements may apply, as outlined in Section 18 of this contract.

### III. Program Evaluation

The City shall evaluate this project based on the objectives stated in Section I.B. of this Exhibit. Failure by the Agency to provide the level of service stated herein may result in a determination by the City to modify the level of payment to the Agency on a pro rata basis with level of service. The Agency records are subject to review by the City to ensure the accuracy and validity of information reported in monthly progress reports.

**BUDGET**

|                                         |                   |
|-----------------------------------------|-------------------|
| Professional Services; Salaries Support | <u>\$2,635.00</u> |
| TOTAL                                   | \$2,635.00        |

City of Wichita  
City Council Meeting  
November 17, 2009

**To:** Mayor and City Council

**Subject:** Amendment to Metropolitan Transportation Plan 2035 Consultant Contract

**Initiated By:** Wichita Area Metropolitan Planning Organization

**Agenda:** City Council (Consent)

---

**Recommendation:** As fiscal agent, approve the amendment to the contract with Wilbur Smith Associates for the Metropolitan Transportation Plan (MTP) 2035 consulting services.

**Background:** The Wichita Area Metropolitan Planning Organization (WAMPO) is responsible for updating and maintaining the Wichita Area Regional MTP. The MTP is the document that provides direction for the use of regional federal transportation funds. It must comply with federally mandated processes and programs. The results of the MTP 2035 will identify the transportation needs of the region which in turn will allow federal transportation funds to continue to be available to the region. Without the plan in place, federal transportation funds will be frozen until the plan is completed. The amendment increases the responsibilities of the consultant.

**Analysis:** Professional consulting services were sought to assist staff in completing the MTP 2035. As a result, a contract with Wilbur Smith Associates was executed on June 24, 2009. On November 10, 2009, the WAMPO Transportation Policy Body approved this amendment to the existing contract with Wilbur Smith Associates. The amendment provides additional project support which was the result of additional Project Advisory Committee meetings and the loss of a staff member who was integral to the MTP development. The MTP is time sensitive leaving no time to train staff in the activities and responsibilities in which the departed staff member had been involved.

**Financial Consideration:** This contract amendment is for a total cost not to exceed \$99,139.47. This amendment will bring the total for the contract with Wilbur Smith Associates to \$355,040.03. Federal transportation planning available to WAMPO are being used to pay the costs associated with the contractual services. There is no impact to the City of Wichita budget.

**Goal Impact:** Efficient Infrastructure.

**Legal Consideration:** The Law Department has approved the contract as to form.

**Recommendation/Actions:** It is recommended that the City Council authorize the necessary signatures to execute the amended contract to complete the Metropolitan Transportation Plan 2035 as the fiscal agent for the Wichita Area Metropolitan Planning Organization.

**Attachment:** Amended consultant contract.

Metropolitan Transportation Plan 2035  
Consultant Contract

**CONTRACT AMENDMENT**

**THIS CONTRACT AMENDMENT** is entered into this \_\_\_\_ day of \_\_\_\_\_, 2009 by and between the Wichita Area Metropolitan Planning Organization (WAMPO), hereinafter called "CLIENT", and Wilbur Smith Associates, hereinafter called "CONSULTANT".

**WITNESSETH THAT:**

**WHEREAS**, on the 24 day of June, 2009, the above-named parties entered into a contract not to exceed \$255,900.56 for WAMPO as per the Metropolitan Transportation Plan 2035 Consultant Contract; and

**WHEREAS**, the specifications for the Metropolitan Transportation Plan 2035 Consultant Contract specified the terms of the contract; and

**NOW, THEREFORE**, the above named parties hereby agree, covenant and contract with each other that the terms of the original contract dated the 24 day of June, 2009, are hereby reaffirmed and re-executed for and on behalf of these parties except for the following amendment, modification and change.

**NOW, THEREFORE**, the Amendment to the Metropolitan Transportation Plan 2035 Consultant Contract shall include specifications identified in Exhibit B(i) and Exhibit C(i) and shall not exceed \$355,040.03.

Exhibit B(i) – Amendment to Scope of Services  
Attached is Exhibit B(i), which outlines the changes to the Scope of Services from the original Metropolitan Transportation Plan 2035 Consultant Contract entered into on the 24 day of June, 2009.

Exhibit C(i) – Total Contract Fee Summary after Amendment  
Attached is Exhibit C(i), which outlines the amended Fee Summary. This amended Fee Summary shows the original Metropolitan Transportation Plan 2035 Consultant Contract Fee Summary, the addition of the Amendment Fee Summary, as well as the amended Total Fee Summary.

**No Arbitration.** The CONSULTANT and the CLIENT shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.

**Representative's Authority to Contract.** By signing this contract, the representative of the contractor or vendor represents that he or she is duly authorized by the contractor or vendor to execute this contract, and that the contractor or vendor has agreed to be bound by all its provisions.



**IN WITNESS WHEREOF**, the parties hereto have executed this contract amendment the day and year first above written.

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Joe Allen Lang  
Chief Deputy City Attorney, City of Wichita

\_\_\_\_\_  
Date

**WICHITA AREA METROPOLITAN PLANNING ORGANIZATION:**

\_\_\_\_\_  
**Tim Norton**  
Transportation Policy Body Chairperson

\_\_\_\_\_  
Date

**CITY OF WICHITA AS FISCAL AGENT:**

\_\_\_\_\_  
Carl Brewer  
Mayor

\_\_\_\_\_  
Date

**ATTEST:**

\_\_\_\_\_  
John Schlegel  
WAMPO Secretary

\_\_\_\_\_  
Date

**WILBUR SMITH ASSOCIATES**

\_\_\_\_\_  
Douglas LaVoie, PE  
Regional Vice President

\_\_\_\_\_  
Date

## **Exhibit A**

### **REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
  - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
  - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
  - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
  - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
  2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
  3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
  4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

## **Exhibit B(i) - Amendment to Scope of Services**

The following amendments and changes are made to the Scope of Services labeled Exhibit B in the Original Agreement dated June 24, 2009. These amendments and changes are incorporated and made part of the Scope of Services. Hours and fees for the Scope of Services additions are attached as **Exhibit D(i)**.

### **Task 1 - Project Management**

Task 1 is amended to add the following:

Due to staff changes at WAMPO, Wilbur Smith Associates (WSA) will effectively assume the role on MTP 2035 previously assigned to the WAMPO staff member designated as the Deputy Project Manager. This scope of work establishes framework for WSA staff to complete project management and administrative production duties on an on-call basis by the WAMPO Project Manager as would have been previously assigned to the WAMPO Deputy Project Manager. These duties would include:

- Assistance with preparation and review of packages for MTP-PAC and other MTP 2035 meetings.
- Review of MTP 2035 related documents prepared by WAMPO staff.
- Assistance with layout and production of handouts and other MTP 2035 related meeting materials.
- Updating project database.

*Under the paragraph marked schedule:* The proposed project completion date as outlined in the scope of work is changed to reflect adoption of the final MTP 2035 plan document in July 2010 and project completion in August 2010. An amended schedule is attached as **Exhibit C(i)**.

### **Task 2 - Additional Safety Data**

Task 2 is amended to add the following:

WSA will collect supplementary safety and security data needed to complete an enhanced safety and security appendix and mitigation tool box as discussed under Task 10 below.

### **Task 5 - Stakeholder Involvement**

Task 5 is amended as follows:

*Under the paragraph labeled PAC meetings, the following text is added:* WSA will prepare for and attend additional/emergency PAC meetings to complete all of the project scoring, scenario development, scenario revisions, and final project listing activities that may be required for the project. This scope anticipates 10 additional PAC or PAC subcommittee meetings requiring preparation and attendance.

*Under the paragraph labeled Stakeholder Interviews, the following text is added:* WSA will have responsibility for the planning, coordination, scheduling, and preparation for all stakeholder interviews/meetings as outlined in the original scope of services. WSA will maintain a stakeholder coordination log/database and prepare stakeholder meeting summaries. WAMPO

staff may assist with the scheduling of meetings and will likely attend all stakeholder meetings/interviews.

The paragraph labeled E-News Updates is amended to state that a weekly electronic news update to stakeholders will be provided.

### **Task 6 - Incorporation of Regional and Local Plans**

This task is amended to add the following:

WSA will collect, analyze, and incorporate additional existing plan data from both local and state sources to assist in the further development of the environmental analysis described under Task 8 and the Safety and Security Elements discussed under Task 10 below.

### **Task 8 - Plan Evaluations**

This task is amended to add the following:

*Under the paragraph labeled Environmental Analysis and Coordination:* WSA will assume full responsibility for completing the environmental analysis for the project including oversight, coordination, mapping, and effects analysis for the proposed scenarios. This includes both human and natural environmental effects and required analysis of noise effects. Formal noise modeling is not a part of the needed plan analysis. The environmental analysis will also discuss land use management and conservation, existing environmental protection and conservation areas, and environmental resources conservation and protection policies. An environmental mitigation measures list or tool box will be developed to provide potential regional policies, programs, and strategies for the conservation and protection of resources potentially affected by MTP 2035. The mitigation tool box will raise awareness of the potential environmental issues related to transportation.

WSA will provide an analysis of the potential inducement/support of economic development resulting from implementation of MTP 2035. This analysis will be based on data collected through coordination with and interviews with economic development and other stakeholders. A formal economic model is not part of the plan analysis.

WSA will also complete the analysis of existing economic activity and the role of transportation in the regional economy required for the plan.

### **Task 10 - Development of Plan Elements**

This task is amended to add the following:

*Under the Paragraph Labeled Safety:* WSA will prepare a full safety analysis of regional safety conditions including:

- Key locations of safety concerns
- Trends and rates in injury, property damage, and fatal crashes including comparison to state averages
- Analysis of crash types
- Discussion of contributing factors to safety concerns including design, driving habits, alcohol, weather, etc.
- Analysis of effects related to bicycles, pedestrians, and transit



## Exhibit C(i) - Total Contract Fee Summary after Amendment

CONSULTANT NAME:

**Wilbur Smith Associates**

|                                      | Hours       | WSA Labor and Overhead Cost | Direct Expenses    | WSA Fixed Fee      | Subconsultant Costs | Total Cost          |
|--------------------------------------|-------------|-----------------------------|--------------------|--------------------|---------------------|---------------------|
| Original Agreement - June 24, 2009   | 2215        | \$141,618.86                | \$9,812.00         | \$14,167.89        | \$90,307.81         | \$255,906.56        |
| Amendment                            | 957         | \$64,716.78                 | \$5,951.00         | \$2,471.82         | \$0.00              | \$89,139.47         |
| <b>Total Original plus Amendment</b> | <b>3173</b> | <b>\$226,335.65</b>         | <b>\$15,763.00</b> | <b>\$22,633.57</b> | <b>\$90,307.81</b>  | <b>\$355,040.03</b> |



**CONTRACTS & AGREEMENTS**  
**BLANKET PURCHASE ORDERS RENEWAL OPTIONS**  
**OCTOBER 2009**

| COMMODITY TITLE                                                                                                                    | EXPIRATION | VENDOR NAME                                          | DEPARTMENT                                       | ORIGINAL                | RENEWAL OPTIONS    |
|------------------------------------------------------------------------------------------------------------------------------------|------------|------------------------------------------------------|--------------------------------------------------|-------------------------|--------------------|
|                                                                                                                                    | DATE       |                                                      |                                                  | CONTRACT DATES          | REMAINING          |
| Garments, Employee Embroidered                                                                                                     | 10/31/2010 | Industrial Uniform Company, Inc.                     | Various                                          | 11/1/2004 - 10/31/2005  | Annual basis       |
| Grave Site Excavation Highland and Jamesburg                                                                                       | 10/31/2009 | SI Funeral Services (formerly Wichita Wilbert Vault) | Parks & Recreation                               | 11/1/2003 - 10/31/2004  | Annual basis       |
| Oils-Lubricating, Gear, Grease, Transmission Fluid and Oil Analysis                                                                | 10/31/2010 | Universal Lubricants, LLC                            | Various                                          | 11/1/2008 - 10/31/2009  | 1 - 1 year option  |
| Paint and Paint Supplies                                                                                                           | 10/31/2010 | ICI/Glidden Paints                                   | Housing & Community Services                     | 11/1/2008 - 10/31/2009  | 1 - 1 year option  |
| Pool Chemicals - Groups 1, 2, 4 and 5                                                                                              | 10/31/2009 | United Industries, Inc.                              | Parks & Recreation                               | 5/1/2008 - 10/31/2008   | 1 - 1 year option  |
| Pool Chemicals (Diamotaceous Earth - Group 3)                                                                                      | 10/31/2009 | Harcros Chemicals, Inc.                              | Parks & Recreation                               | 5/1/2008 - 10/31/2008   | 1 - 1 year option  |
| Preventive Service Maintenance and Inspection for Chillers, Boilers and Pumps                                                      | 10/31/2010 | Kruse Corporation                                    | Housing & Community Services and Water Utilities | 11/1/2008 - 10/31/2009  | 1 - 1 year option  |
| Street Sign Hardware                                                                                                               | 10/31/2010 | MDSolutions, Inc.                                    | Public Works                                     | 11/1/2008 - 10/31/2009  | 1 - 1 year option  |
| Uniforms - Animal Control                                                                                                          | 10/31/2010 | Baysinger Police Supply, Inc.                        | Environmental Services                           | 11/1/2008 - 10/31/2009  | 1 - 1 year option  |
| Uniforms-Investigations/Ambassadors/5.11 Polo Shirts, Pants, Boots for Wichita Police Department and Wichita Mid-Continent Airport | 10/21/2009 | Baysinger Police Supply, Inc.                        | Police & Airport                                 | 10/21/2008 - 10/21/2009 | 2 - 1 year options |

**PROFESSIONAL CONTRACTS UNDER \$25,000**  
**OCTOBER 2009**

| VENDOR NAME                             | DOCUMENT NO | DOCUMENT TITLE                                     | AMOUNT    |  |  |
|-----------------------------------------|-------------|----------------------------------------------------|-----------|--|--|
| Black & Veatch Corporation              | PO930812    | Water Supply, Treatment, and Distribution - Engine | 12,000.00 |  |  |
| Ruggles & Bohm PA                       | PO930825    | Engineering Consulting                             | 3,500.00  |  |  |
| Ruggles & Bohm PA                       | PO930827    | Engineering Consulting                             | 3,700.00  |  |  |
| Crafton, Tull, Sparks & Associates Inc. | PO930828    | Engineering Consulting                             | 3,900.00  |  |  |
| MKEC Engineering Consultants Inc.       | PO930829    | Engineering Consulting                             | 11,715.00 |  |  |
| Young & Associates                      | PO930832    | Engineering Consulting                             | 3,500.00  |  |  |

**ANNUAL MAINTENANCE CONTRACTS OVER \$25,000**  
**DIRECT PURCHASE ORDERS FOR OCTOBER 2009**

| VENDOR NAME                     | DOCUMENT NO | DOCUMENT TITLE                                   | AMOUNT       |  |  |
|---------------------------------|-------------|--------------------------------------------------|--------------|--|--|
| Accero Inc.                     | DP931720    | Software Maintenance/Support                     | \$138,526.00 |  |  |
| GIS Information Systems, Inc.   | DP931709    | Library Machines and Supplies, Maint. and Repair | \$31,561.00  |  |  |
| Hansen Information Technologies | DP931764    | Software Maintenance/Support                     | 83,261.63    |  |  |
| Siemens Communications Inc.     | DP931633    | Telecommunication Services                       | \$31,780.62  |  |  |



**Senior Management Expenses  
For the Month of August 2009**

| <b>Employee by Department</b>                                  | <b>Purpose</b>                                      | <b>Amount</b>      |
|----------------------------------------------------------------|-----------------------------------------------------|--------------------|
| <b>09-Housing &amp; Community Services</b>                     |                                                     |                    |
| Mary K Vaughn, Director of Housing & Community Services        | Kansas Housing Conference, Overland Park KS         | \$ 711.90          |
| Brad Snapp, Assistant Director of Housing & Community Services | SW Regional Council NAHRO Meeting, Oklahoma City OK | 399.54             |
| <b>15-Planning</b>                                             |                                                     |                    |
| John Schlegel, Director of Planning                            | MTP 2035 Meeting, Topeka KS                         | 131.71             |
| <b>18-Water and Sewer</b>                                      |                                                     |                    |
| David Warren, Director of Water & Sewer                        | KWEA & KS AWWA Joint Annual Conf, Topeka KS         | 483.14             |
| Elizabeth Owens, Superintendent Water Distribution             | AWWA Distribution Systems Symposium, Reno NV        | 1,848.13           |
| Jade Dundas, Superintendent Sewage Treatment                   | KWEA & KS AWWA Joint Annual Conf, Topeka KS         | 362.64             |
| <b>Total</b>                                                   |                                                     | <b>\$ 3,937.06</b> |

**Senior Management Expenses  
For the Month of September 2009**

| <b>Employee by Department</b>                      | <b>Purpose</b>                                             | <b>Amount</b>       |
|----------------------------------------------------|------------------------------------------------------------|---------------------|
| <b>01-City Manager Staff</b>                       |                                                            |                     |
| Robert Layton, City Manager                        | ICMA Annual Conference - Montreal Canada                   | \$ 2,662.54         |
| Cathy Holdeman, Assistant City Manager             | ICMA Annual Conference - Montreal Canada                   | 2,609.24            |
| <b>10-Library</b>                                  |                                                            |                     |
| Cynthia Berner-Harris, Director of Libraries       | KLA Special Executive Committee Meeting - Salina, KS       | 79.09               |
| <b>15-Planning</b>                                 |                                                            |                     |
| Nancy Harvieux, Transportation Manager             | Project Core Team US54/400 Corridor Study - Topeka, KS     | 167.53              |
| <b>18-Water and Sewer</b>                          |                                                            |                     |
| Bill Perkins, Superintendent Sewer Maintenance     | KWEA & KS AWWA Joint Annual Conference, Topeka KS          | 576.78              |
| Bill Perkins, Superintendent Sewer Maintenance     | GBA Master Series Annual Conference, Kansas City MO        | 1,316.06            |
| Kristi Irick, Customer Service Manager             | Itron Users Conference, Phoenix AZ                         | 2,971.74            |
| Elizabeth Owens, Superintendent Water Distribution | GBA Master Series Annual Conference, Kansas City MO        | 989.59              |
| <b>19-Airport</b>                                  |                                                            |                     |
| Victor White, Director of Airports                 | Industrial visit, Dallas TX                                | 668.70              |
| Brad Christopher, Assistant Director of Airports   | 26th Annual Central Region Airports Conf, Kansas City MO   | 543.55              |
| Brad Christopher, Assistant Director of Airports   | Fact finding visit for new terminal, Tulsa OK & Branson MO | 183.32              |
| John Oswald, Engineering & Planning Manager        | 26th Annual Central Region Airports Conf, Kansas City MO   | 603.55              |
| <b>Total</b>                                       |                                                            | <b>\$ 13,371.69</b> |

**CITY OF WICHITA**  
**City Council Meeting**

**November 17, 2009**

**TO:** Mayor and City Council Members

**SUBJECT:** Weapons Destruction

**INITIATED BY:** Law Department

**AGENDA:** Consent

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**Recommendation:** Receive and file the report.

**Background:** The Police Department has requested authorization to destroy several weapons which have been confiscated in criminal activity but are no longer needed as evidence.

**Analysis:** City Code provides that weapons seized in connection with criminal activity shall be destroyed or forfeited to the Wichita Police Department. All transactions involving weapon disposal must have prior approval of the City Manager. Lists of weapons being destroyed have been provided (attached), and includes Exhibit A – 61 long guns and 94 handguns. The destruction of the weapons will be witnessed and monitored by staff.

**Financial Considerations:** None.

**Goal Impact:** The destruction of seized weapons furthers the goals of Safe and Secure Neighborhoods by permanently removing these weapons from the streets of Wichita.

**Legal Considerations:** Upon review by the City Council, the necessary court documents will be prepared to proceed with destruction of the listed weapons.

**Recommendations/Actions:** It is recommended that the City Council receive and file the list of weapons.

**Attachment:** List of weapons to be destroyed

OCTOBER 2009 HAND GUN LIST

| #  | CASE NUMBER | MAKE          | MODEL           | SERIAL NUMBER | CAL  | TYPE |
|----|-------------|---------------|-----------------|---------------|------|------|
| 1  | 01C18996    | PHOENIX       | RAVEN           | 3140826       | .25  | PI   |
| 2  | 00C105096   | SMITH & WESS  | 604             | CCR6764       | 357  | PR   |
| 3  | 01C60409    | DAVIS         | P-380           | AP496581      | .380 | PI   |
| 4  | 08C92201    | LORCIN        | L25             | 149231        | .25  | PI   |
| 5  | 01C31045    | RUGER         | P89             | 305-50924     | 9MM  | PI   |
| 6  | 05C25635    | NORINCO       | L213            | 700688        | 9MM  | PI   |
| 7  | 01C26555    | LORCIN        | L380            | 500352        | .380 | PI   |
| 8  | 01C41387    | ARGENTINA     | 4540/41         | 05139A        | .38  | PR   |
| 9  | 01C41617    | ROSSI         | M68             | AA358085      | .38  | PR   |
| 10 | 01C61227    | RUGER         | P93DC           | 306-04558     | 9MM  | PI   |
| 11 | 01C41617    | COLT          | COMBATCOMMANDER | FC26051       | .45  | PI   |
| 12 | 01C32067    | BERETTA       | 950-BS          | BUO1421T      | .22  | PI   |
| 13 | 00C72725    | GLOCK         | 22              | CNW987US      | .40  | PI   |
| 14 | 00C95137    | HI-POINT      | C               | 024346        | 9MM  | PI   |
| 15 | 00C85300    | TAURUS        | PT99AF          | TPE91874      | 9MM  | PI   |
| 16 | 00C84988    | STALLARD ARMS | JS-9MM          |               | 9MM  | PI   |
| 17 | 00C88858    | RUGER         | P94             | 308-53052     | 9MM  | PI   |
| 18 | 00C115711   | HIGH STANDARD | SENTINELMKIV    | S2798         | .22  | PR   |
| 19 | 00C82959    | RUGER         | 22/45           | 223-28149     | .22  | PI   |
| 20 | 00C86619    | SIG SAUER     | P226            | U551352       | 9MM  | PI   |
| 21 | 00C64072    | JENNINGS      | J-22            | 004061        | .22  | PI   |
| 22 | 00C72725    | RG            | RG14            | L694567       | .22  | PR   |
| 23 | 00C104287   | BRYCO         | 48              | 558021        | .380 | PI   |
| 24 | 00C72725    | DAVIS         | P-380           | AP110711      | .380 | PI   |
| 25 | 00C87667    | SMITH & WESS  |                 | V441991       | .38  | PR   |
| 26 | 02C46288    | RUGER         | P89             | 305-11143     | 9MM  | PI   |

| #  | CASE NUMBER | MAKE             | MODEL              | SERIAL NUMBER | CAL  | TYPE |
|----|-------------|------------------|--------------------|---------------|------|------|
| 27 | 00C82117    | PHOENIX ARMS     | HP22               | 4145420       | .22  | PI   |
| 28 | 00C73018    | TAURUS           | PT101AF            | SLK22000D     | .40  | PI   |
| 29 | 00C83895    | BERETTA          | 92FS               | BER369296Z    | 9MM  | PI   |
| 30 | 00C95478    | NORINCO          | 213                | 613260        | 9MM  | PI   |
| 31 | 00C80050    | RUGER            | P89                | 304-93093     | 9MM  | PI   |
| 32 | 00C80050    | SMITH & WESS     | 686-3              | BHT4727       | .357 | PR   |
| 33 | 00C103859   | EXCAM            | TA38               | R01245        | .38  | PD   |
| 34 | 00C102061   | J P SAUER & SOHN | WESTERN<br>MARSHAL | 1413913       | .357 | PR   |
| 35 | 00C111969   | LORCIN           | L380               | 397751        | .380 | PI   |
| 36 | 00C83493    | US REVOLVER CO   |                    | 83270         | .32  | PR   |
| 37 | 00C98067    | RUGER            | P89                | 307-66879     | 9MM  | PI   |
| 38 | 00C104716   | STAR             | FIRESTAR           | 2081390       | .40  | PI   |
| 39 | 00C125057   | TAURUS           | 85                 | LD51545       | .38  | PR   |
| 40 | 02C4571     | H & R            | 732                | AZ002340      | .32  | PR   |
| 41 | 02C5241     | LORCIN           | L380               | 267258        | .380 | PI   |
| 42 | 01C64519    | SMITH & WESS     | 10-6               | BFW3331       | .357 | PR   |
| 43 | 01C57563    | HI-POINT         | C                  | P069199       | 9MM  | PI   |
| 44 | 01C64129    | RUGER            | P90                | 661-43327     | .45  | PI   |
| 45 | 01C38323    | TAURUS           | 85                 | LF71777       | .38  | PR   |
| 46 | 01C24863    | TAURUS           | PT92AF             | TJE40208      | 9MM  | PI   |
| 47 | 01C26601    | LORCIN           | L25                | 301932        | .25  | PI   |
| 48 | 01C13019    | RAVEN            | MP-25              | 1169576       | .25  | PI   |
| 49 | 01C57044    | ROHM             | 38S                | 292459        | .38  | PR   |
| 50 | 01C41271    | SMITH & WESS     | 422                | TRN4566       | .22  | PI   |
| 51 | 01C9261     | ROSSI            | M971               | F097168       | .357 | PR   |
| 52 | 01C59035    | TANFOGLIO        | GT27               |               | .25  | PI   |

| #  | CASE NUMBER | MAKE                | MODEL             | SERIAL NUMBER | CAL  | TYPE |
|----|-------------|---------------------|-------------------|---------------|------|------|
| 53 | 01C4012     | GLOCK               | 17                | ARP625US      | 9MM  | PI   |
| 54 | 01C35418    | SPRINGFIELD         | 1911-A1           | NM40865       | .45  | PI   |
| 55 | 01C4040     | LORCIN              | L380              | 133965        | .380 | PI   |
| 56 | 01C40998    | TAURUS              | PT92AF            | L74505        | 9MM  | PI   |
| 57 | 01C24925    | LORCIN              | L380              | 114946        | .380 | PI   |
| 58 | 01C33155    | RAVEN               | MP-25             | 1706350       | .25  | PI   |
| 59 | 01C190      | NORTH AMERICAN ARMS |                   | G45821        | .22  | PD   |
| 60 | 01C190      | BERETTA             | 21A               | BCS09436U     | .22  | PI   |
| 61 | 01C57674    | SAVAGE ARMS         | 101               | 51075         | .22  | PR   |
| 62 | 01C35418    | SMITH & WESS        | 422               | TBK4488       | .22  | PI   |
| 63 | 01C5964     | RUGER               | NEWMODELBLACKHAWK |               | .357 | PR   |
| 64 | 01C19901    | CLERKE              | CLERKE1ST         | 043651        | .22  | PR   |
| 65 | 01C44779    | NORINCO             | L213              | 601391        | 9MM  | PI   |
| 66 | 00C66104    | HI-POINT            | C                 | 809484        | 9MM  | PI   |
| 67 | 01C35418    | RUGER               | NEWMODELBLACKHAWK | 34-99509      | .357 | PR   |
| 68 | 01C6106     | TAURUS              | PT58S             | KLB70711      | .380 | PI   |
| 69 | 01C52091    | DAVIS               | P-380             | AP105289      | .380 | PI   |
| 70 | 01C58036    | RUGER               | MKII              | 19-80435      | .22  | PI   |
| 71 | 01C55278    | ROHM                | RG38              | 117956        | .38  | PR   |
| 72 | 01C11904    | TAURUS              | PT111             | TRE02685      | 9MM  | PI   |
| 73 | 01C190      | DAVIS               | D9                | D118168       | 9MM  | PD   |
| 74 | 01C41810    | ROSSI               | M971              | F031929       | .357 | PR   |
| 75 | 00C21121    | SMITH & WESS        | 12-2              | D665007       | .38  | PR   |
| 76 | 00C37923    | DAVIS               | P-380             | AP367568      | .380 | PI   |
| 77 | 00C60642    | BRYCO               | JENNINGSNINE      | 1389240       | 9MM  | PI   |
| 78 | 00C63424    | SMITH & WESS        | 686               | ABV4575       | .357 | PR   |



| #   | CASE NUMBER | MAKE          | MODEL    | SERIAL NUMBER | CAL  | TYPE |
|-----|-------------|---------------|----------|---------------|------|------|
| 79  | 00C13799    | RUGER         | P89      | 305-31107     | 9MM  | PI   |
| 80  | 00C24277    | DAVIS         | P-380    | AP105292      | .380 | PI   |
| 81  | 00C61550    | LORCIN        | L380     | 483997        | .380 | PI   |
| 82  | 00C22885    | RUGER         | REDHAWK  | 502-41848     | .41  | PR   |
| 83  | 00C31718    | RUGER         | P85      | 300-71263     | 9MM  | PI   |
| 84  | 00C47745    | TAURUS        | PT92AF   | TNG03634      | 9MM  | PI   |
| 85  | 00C33515    | TAURUS        | 85       | KB78156       | .38  | PR   |
| 86  | 00C60183    | HI-POINT      | C        | 815864        | 9MM  | PI   |
| 87  | 00C2811     | BRYCO         | BRYCO59  | 780621        | 9MM  | PI   |
| 88  | 00C59927    | BERETTA       | 950BS    | BR28205V      | .22  | PI   |
| 89  | 00C4790     | H & R         | 732      | AD34543       | .32  | PR   |
| 90  | 00C51484    | SIG SAUER     | P230SL   | S047925       | 9MM  | PI   |
| 91  | 00C40349    | STAR          | FIRESTAR | 2067500       | .45  | PI   |
| 92  | 00C40349    | RG            | RG30     | 13383         | .32  | PR   |
| 93  | 00C26636    | STAR          | FIRESTAR | 2068221       | .45  | PI   |
| 94  | 00C9821     | STALLARD ARMS | JS-9MM   | 088204        | 9MM  | PI   |
| 95  |             |               |          |               |      |      |
| 96  |             |               |          |               |      |      |
| 97  |             |               |          |               |      |      |
| 98  |             |               |          |               |      |      |
| 99  |             |               |          |               |      |      |
| 100 |             |               |          |               |      |      |
| 101 |             |               |          |               |      |      |
| 102 |             |               |          |               |      |      |
| 103 |             |               |          |               |      |      |
| 104 |             |               |          |               |      |      |

OCTOBER 2009 LONG GUN LIST

| #  | CASE NUMBER | MAKE         | MODEL         | SERIAL NUMBER | CAL   | TYPE |
|----|-------------|--------------|---------------|---------------|-------|------|
| 1  | 00C72725    | SAVAGE ARMS  | SAVAGE110E    | E966923       | 270   | RB   |
| 2  | 00C72725    | MOSSBERG     | 183T          | 615595        | 410GA | SB   |
| 3  | 00C108759   | SAVAGE ARMS  | 23AA          | 131751        | .22   | RB   |
| 4  | 00C72725    | MOSSBERG     | 500A          | K556628       | 12GA  | SP   |
| 5  | 00C72725    | SAVAGE ARMS  | 951SERIESF    | B274447       | 410GA | SB   |
| 6  | 00C117660   | WINCHESTER   | 290           | B1980241      | .22   | RI   |
| 7  | 00C82959    | CGA          | SKS           | C69118597     | 7.62  | RI   |
| 8  | 00C82959    | RUGER        | 10/22         | 244-48135     | .22   | RI   |
| 9  | 00C64072    | SAVAGE ARMS  | STEVENS940E   |               | 20GA  | SS   |
| 10 | 00C109310   | WESTERNFIELD | M550ABD       | G151879       | 12GA  | SP   |
| 11 | 00C109310   | WINCHESTER   | 1912          | 65823         | 12GA  | SP   |
| 12 | 00C102061   | ENGLAND      |               | T2855         |       | RB   |
| 13 | 00C108148   | H & R        | TOPPER158     |               | 20GA  | SS   |
| 14 | 00C102061   | NORINCO      | MAK-90SPORTER | 9465532       | 7.62  | RI   |
| 15 | 00C102061   | WINCHESTER   | 1917          | 106404        |       | RI   |
| 16 | 00C102061   | WINCHESTER   | 190           | B1959537      | .22   | RI   |
| 17 | 00C102061   | STEVENS      | 22-410        | LZ30          | 410GA | SS   |
| 18 | 00C73602    | FRANCHI      | SPAS12        | AA6348        | 12GA  | SP   |
| 19 | 00C102061   | WINCHESTER   | DEFENDER      | L1427538      | 12GA  | SP   |
| 20 | 00C102061   | STEN         | MKII          | T41403        |       | RI   |
| 21 | 01C18996    | BAIKAL       |               | 998142106B    | 12GA  | SP   |
| 22 | 01C26481    | REMINGTON    | 514           | 0B5           | .22   | RB   |
| 23 | 01C41387    | NEW ENGLAND  | PARDNERSB1    | NL278737      | 12GA  | SS   |
| 24 | 01C30169    | HI-POINT     | 995           | B13476        | 9MM   | RI   |
| 25 | 01C18394    | H & R        | TOPPERJR490   | AG260941      | 410GA | SS   |
| 26 | 00C50580    | REMINGTON    | WINGMASTER742 | 108629        | .308  | RI   |

| #  | CASE<br>NUMBER | MAKE                   | MODEL                | SERIAL<br>NUMBER | CAL   | TYPE |
|----|----------------|------------------------|----------------------|------------------|-------|------|
| 27 | 00C51484       | REMINGTON              | WINGMASTER870        | V885949V         | 12GA  | SP   |
| 28 | 00C51484       | MARLIN                 | GLENFIELD75          | 18357036         | .22   | RI   |
| 29 | 00C51484       | REMINGTON              | WINGMASTER870        | V885962V         | 12GA  | SP   |
| 30 | 00C2811        | REMINGTON              | 870MAGNUM            | W548850M         | 12GA  | SP   |
| 31 | 00C11343       | REMINGTON              | 1100                 |                  | 12GA  | SI   |
| 32 | 01C33373       | NORINCO                | SKS                  | 22000419         | 7.62  | RI   |
| 33 | 01C6330        | REMINGTON              | 7400                 | B8270454         | 30-06 | RI   |
| 34 | 01C5941        | WINCHESTER             |                      | 702517           | 12GA  | SP   |
| 35 | 01C190         | MOSSBERG               | 500AT                | G479570          | 12GA  | SP   |
| 36 | 01C6330        | BENELLI                | NOVA                 | Z034969          | 12GA  | SP   |
| 37 | 01C6330        | BROWNING               | INVECTORGOLD10       | 08096NTR91       | 10GA  | SI   |
| 38 | 01C5941        | SAVAGE ARMS            | STEVENS9478          | C913097          | 20GA  | SS   |
| 39 | 01C36466       | WINCHESTER             | 37A                  | C975241          | 12GA  | SS   |
| 40 | 01C20670       | J. STEVENS             |                      |                  |       | SS   |
| 41 | 01C20670       | SAVAGE ARMS            | SPRINGFIELD18D       | A385474          | 12GA  | SB   |
| 42 | 01C20670       | MOSSBERG               | 500C                 | K159086          | 20GA  | SP   |
| 43 | 01C33853       | MOSSBERG               | 500AR                |                  | 12GA  | SP   |
| 44 | 01C5941        | WARDS<br>WESTERNFIELD  | 80                   | 139851K          | .22   | RP   |
| 45 | 01C9005        | HI-POINT               | 995                  | A14073           | 9MM   | RI   |
| 46 | 01C59183       | REMINGTON              | 522 VIPER            | 3056435          | .22   | RI   |
| 47 | 01C48446       | H & R                  | GREENWING CLASSIC    |                  | 20GA  | SS   |
| 48 | 01C53980       | SAVAGE ARMS            | SPRINGFIELD67SERIESC | D343882          | 20GA  | SP   |
| 49 | 01C12438       | SINGER NIKKO CO<br>LTD | DAIWA AUTO 500       | P012693          | 12GA  | SI   |
| 50 | 01C20968       | WINCHESTER             | 1200                 | 264881           | 12GA  | SP   |
| 51 | 01C35418       | NORINCO                | SKS                  | 07060            | 7.62  | RI   |
| 52 | 01C35418       | MARLIN                 | LIMITED EDITION 3080 | TR000324         | 30/30 | RL   |

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| #  | CASE NUMBER | MAKE         | MODEL                   | SERIAL NUMBER | CAL   | TYPE |
|----|-------------|--------------|-------------------------|---------------|-------|------|
| 53 | 01C27221    | WINCHESTER   | 94                      | 4674366       | 30-30 | RL   |
| 54 | 01C27221    | WESTERNFIELD | M550ABR                 | G816846       | 12GA  | SP   |
| 55 | 01C40998    | WESTERNFIELD | XNH-565D                |               | 12GA  | SP   |
| 56 | 01C35418    | REMINGTON    | WINGMASTER870           | S344893V      | 12GA  | SP   |
| 57 | 01C57674    | MOSSBERG     | 500A                    | P065447       | 12GA  | SP   |
| 58 | 01C52527    | MARLIN       | LIMITED EDITION<br>6083 | 16310715      | .22   | RI   |
| 59 | 01C18321    | REMINGTON    | 597                     | A2611867      | .22   | RI   |
| 60 | 01C8835     | RFI INDIA    |                         | B8944         | .305  | RB   |
| 61 | 01C19940    | SAVAGE ARMS  | STEVENS 94              |               | 16GA  | SS   |
| 62 |             |              |                         |               |       |      |
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City of Wichita  
City Council Meeting  
November 17, 2009

**TO:** Mayor and City Council

**SUBJECT:** Naming of Chapin Park. (District III)

**INITIATED BY:** Department of Park and Recreation

**AGENDA:** Consent

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**Recommendation:** Name the park.

**Background:** The area popularly known as Chapin Park, formerly the Chapin Landfill, is located at 3800 South Hydraulic in South Wichita along the Arkansas River. A Needs Assessment Study and a series of public meetings assisted the Park and Recreation Department in establishing a development plan for the area.

The City started acquiring the land in 1955 and finished the acquisition in the late 1970's, at which time it was set aside for a future regional park. The Board of Park Commissioners began seeking name recommendations for this parcel earlier this year. At each neighborhood meeting, the consensus was to continue the name Chapin Park, for the family that originally owned the land. On August 10, 2009, the Board of Park Commissioners unanimously voted to recommend the City Council designate the area Chapin Park.

The park area will include the city's first dog park which promotes an open area where citizens can safely play with their pets. The Radio Control Airplane Club continues using an area designated for their usage with the addition of an asphalt parking area. A mountain bike trail and 6' wide gravel walking trail have also been installed in the park area with asphalt roads providing access to the park from MacArthur Road.

**Analysis:** In researching the acquisition, staff could find no record of official action by the City Council that formalized neither the park usage nor a name for the "park".

City Council Policy 13 delineates the requirements for naming public facilities "...in accordance with their intended use..." The policy calls for a seven-member committee consisting of residents appointed by the Mayor and City Council to formulate the recommendation prior to City Council consideration. On March 4, 2003, the City Council approved the Board of Park Commissioners to serve as the Naming Advisory Committee for parks and open space.

**Financial Consideration:** Park and Recreation will install signage to designate the area as a park and provide continued maintenance.

**Goal Impact:** Naming the Park will help promote a vibrant neighborhood by defining a better sense of locality.

**Legal Consideration:** The Board of Park Commissioner action as Naming Advisory Committee for park and recreation areas is consistent with the provisions of City Council Policy 13.

**Recommendation/Actions:** It is recommended that the City Council approve naming the area located at 3800 South Hydraulic, Chapin Park.

**Attachment:** None.

City of Wichita  
City Council Meeting  
November 17, 2009

**TO:** Mayor and City Council  
**SUBJECT:** River District Redevelopment Project Budget Adjustments  
**INITIATED BY:** Department of Finance  
**AGENDA:** Consent

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**Recommendation:** Adopt the bonding resolution.

**Background:** One September 1, 2009, the City Council approved a revised Master Plan for WaterWalk. At that time, staff indicated that, upon reaffirmation of the State's commitment to STAR Bonds for the River District project by the Department of Commerce, revisions to relevant resolutions and other City financing documents would be required to reflect the official incorporation of STAR Bond financing and to approve the new total cost of the project. These revisions are now being brought forward.

**Analysis:** The proposed resolution provides appropriate and necessary bonding authority for the use of Special Obligation STAR Bonds. Interjecting STAR Bonds into the financing of River District projects impacts project totals and other non-STAR Bond sources of funding. The proposed resolution ensures project totals and other sources of funding are correctly adjusted.

The attached resolution appropriately authorizes STAR Bond where authorization does not already exist. STAR Bond funding is programmed as follows:

|                                                       |                      |
|-------------------------------------------------------|----------------------|
| Keeper of the Plains/Pedestrian Bridges project       | \$ 6,000,000         |
| East Riverbank (adjacent to Broadview Hotel property) | 2,200,000            |
| Waltzing Waters fountain and plaza                    | 4,300,000            |
| River amenities                                       | 200,000              |
| Contingency                                           | 300,000              |
| <b>Total*<sup>1</sup></b>                             | <b>\$ 13,000,000</b> |

The resolution provides \$41,600,000 for the total financing of the WaterWalk project. The financing breaks out as follows:

|                                        |                      |
|----------------------------------------|----------------------|
| General Obligation Bonds* <sup>1</sup> |                      |
| Home Rule authority                    | \$ 13,900,000        |
| TIF and/or DSF                         | 22,653,000           |
| Federal EDI Grant                      | 247,000              |
| STAR Bonds* <sup>2</sup>               | 4,800,000            |
| <b>Total*<sup>1</sup></b>              | <b>\$ 41,600,000</b> |

\*<sup>1</sup> Does not include administrative fees, interest or bond issuance costs.

\*<sup>2</sup> Does not include \$2.2 million for Riverbank nor \$6 million for Keeper of the Plains.

**Financial Considerations:** All City funding is within the overall project budget for the City's participation in the River District Redevelopment Project as expressed in the Project Plan and in the WaterWalk Development Agreement and later amendments.

**Legal Considerations:** The Law Department has approved the resolution as to form.

**Goal Impact:** The River District Redevelopment Project affects Economic Vitality through economic development, the Quality of Life for citizens of Wichita, and the City's Core Area through continued revitalization.

**Recommendations/Actions:** It is recommended that the City Council adopt the resolution amending prior bonding resolutions authorizing the use of General Obligation and Special Obligation STAR Bond financing for the River District Redevelopment Project.

**Attachments:**

- Resolution

(Published in the Wichita Eagle on \_\_\_\_\_)  
RESOLUTION NO. \_\_\_\_\_

A RESOLUTION AMENDING CERTAIN PRIOR RESOLUTIONS OF THE GOVERNING BODY OF SAID CITY, INCLUDING (1) AMENDING RESOLUTION NO. 02-402, AS AMENDED BY RESOLUTIONS NOS. 04-534 AND 06-367, AUTHORIZING THE ISSUANCE OF CERTAIN BONDS OF THE CITY OF WICHITA, KANSAS TO PAY THE COSTS OF PUBLIC IMPROVEMENTS IN THE REDEVELOPMENT OF THE EAST BANK REDEVELOPMENT AREA, AND (2) AMENDING RESOLUTION 03-671, AS AMENDED BY RESOLUTIONS NOS. 04-534 AND 05-189, AUTHORIZING THE ISSUANCE OF BONDS OF THE CITY OF WICHITA TO PAY THE COSTS OF CERTAIN PUBLIC IMPROVEMENTS IN CONNECTION WITH THE RIVER CORRIDOR PROJECT.

WHEREAS, the governing body of the City of Wichita, Kansas (the "City") adopted Resolution No. 02-402 on September 10, 2002, authorizing the issuance of general obligation bonds of the City under the authority of K.S.A. 13-1024c, as amended by the Charter Ordinance No. 156 of the City, to pay the cost of public improvements included in the redevelopment of the East Bank Redevelopment Area, and subsequently adopted Resolution No. 04-534, on September 21, 2004, and Resolution No. 06-367, on June 20, 2006, to amend the amount of the bonds authorized to be issued for such purpose; and

WHEREAS, the governing body adopted Resolution No. 03-671 on December 30, 2003, which amended certain prior actions of the governing body, and authorized the issuance of General Obligation bonds of the City under the authority of K.S.A. 13-1024c, as amended by Charter Ordinance No. 156 of the City, to pay the cost of public improvements included in the River Corridor Project; and

WHEREAS, in connection with the redevelopment of the East Bank Redevelopment Area, the governing body adopted Resolution No. 04-534, on September 21, 2004, to evidence its intent to make an economic development grant to the approved Developer thereof to pay a portion of the cost constructing a facility to be leased to a national destination retailer, and to provide for the issuance of certain General Obligation bonds of the City for the purpose of funding such grant; and

WHEREAS, the governing body adopted Resolution No. 04-534, on September 21, 2004, to provide an alternative method of financing a portion of the cost of public improvements included in the River Corridor Project, to be authorized under Article 12, Section 5 of the Kansas Constitution to provide for economic development grants, and subsequently adopted Resolution No. 06-367 on June 20, 2006, to amend the amount of bonds authorized for said financing; and

WHEREAS, the governing body adopted Ordinance No. 46-407, on November 16, 2004, amending the East Bank Redevelopment District Plan and expanding the geographic boundaries of the East Bank Redevelopment District for the specific purpose of including STAR bonds as a financing component of the District Redevelopment Plan; and

WHEREAS, the governing body adopted Resolution No. 05-189, on April 5, 2005, amending Resolution No. 03-671, as amended and supplemented by Resolution 04-534 on September 21, 2004, authorizing the issuance of bonds by the City of Wichita at large for improvements to the Arkansas Riverbank; and



WHEREAS, the governing body adopted Ordinance 47-518, on July 10, 2007, approving the River District STAR Bond Project Plan and authorizing the use of Special Obligation STAR bonds for financing public improvement projects within the East Bank Redevelopment Area, for a total of \$13,000,000, exclusive of the costs of interest on borrowed money, to be authorized under K.S. A. 12-1770, et seq., as amended, with said authorization being necessarily affirmed by the Kansas Department of Commerce by letter in October 2008 and recently reaffirmed by letter in September 2009; and

WHEREAS, the governing body adopted Resolution No. 09-358, on November 3, 2009, amending Resolution No. 08-481, adopted on October 7, 2008, authorizing the issuance of General Obligation bonds of the City in the amount of \$2,200,000 under the authority of K.S.A 13-1024c, as amended by Charter Ordinance No. 156 of the City, to pay the cost of public improvements in connection with a River Corridor Project within the River District Redevelopment Project Plan; and

WHEREAS, in connection with the formal approval for the use of STAR Bond financing from the State Secretary of Commerce and with certain changes in the plans and agreements for redevelopment of the East Bank Redevelopment Area, the governing body now desires to amend Resolution No. 02-402 as previously amended by Resolution No. 04-534 and Resolution No. 06-367, amend Resolution No. 03-671 as previously amended by Resolution No. 04-534 and Resolution No. 05-189, to provide for the issuance of \$13,000,000 in Special Obligation STAR bonds as a component in the redevelopment plan financing, to recognize the bonding authorization for \$860,000 of administrative expenses, to provide for the inclusion of an Economic Development Initiative (EDI) grant in the redevelopment plan financing, and to recognize intended reallocations of bonded expenditures for public improvements and economic development grants within the expanded East Bank Redevelopment Area in accordance with the adopted River District Redevelopment Project Plan; and

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. That Section 1 of Resolution 06-367, which had amended Section 1 of Resolution 04-534, is hereby amended to read as follows:

That Section 1 of Resolution No. 04-534 is hereby amended to read as follows:

Section 1. That the City of Wichita, Kansas is hereby authorized to issue General Obligation bonds in the total aggregate principal amount of \$41,600,000, plus up to \$860,000 for administrative costs, and plus the costs of interest on borrowed money and other issuance costs, to pay certain costs in connection with the redevelopment of the East Bank Redevelopment Area, and to pay certain costs in connection with the River Corridor Project, all as more particularly described below.

Section 2. That Section 2 of Resolution 06-367, which had amended Section 2 of Resolution No. 04-534, which had amended Section 2 of Resolution No. 02-402, is hereby amended to read as follows:

Section 2. That Section 2 of Resolution No. 04-534 is hereby amended to read as follows:

That Section 2 of Resolution No. 02-402 is hereby amended to read as follows:

Section 2. The governing body hereby declares it to be its intention to issue and sell, in the manner provided by law, general obligation bonds under the authority of K.S.A. 13-1024c, as amended by City of Wichita Charter Ordinance No. 156, to pay the cost of public improvements included in the redevelopment of the East Bank Redevelopment Area.

Such costs include architectural fees, consultant costs, construction costs and direct expense associated with development and construction of the public improvements identified in Exhibit 13 and Section 3.1 of the Development Agreement Regarding Development of the East Bank approved by the governing body of the City of Wichita on September 10, 2002. The public improvements shall include land acquisition, environmental and geotechnical testing and remediation, demolition, a waterway, pedestrian bridges, a vehicular bridge, parking garage, paving, utilities extensions and relocations, sidewalks, riverbank improvements, public plaza areas, streetscape and landscape improvements and handicapped accessible facilities and equipment.

A portion of the costs of such improvements shall be paid by the issuance of general obligation bonds as aforesaid in an amount not to exceed \$22,900,000 plus up to \$860,000 for administrative costs, and plus the cost of interest on borrowed money and other issuance costs. A portion of the costs of such public improvements in connection with the East Bank Redevelopment Project shall be paid through the issuance by the City of Special Obligation STAR bonds, under authority of K.S.A. 12-1770, *et seq.*, as amended, in an amount not to exceed \$4,800,000 plus administrative costs and plus the costs of interest on borrowed money and other issuance costs. A portion of the funding for public improvements in connection with the East Bank Redevelopment Project shall be provided in part through an EDI grant from the U.S. Department of Housing and Urban Development (HUD) in an amount not to exceed \$247,500.

Section 3. That Section 1 of Resolution No. 05-189, which amended Section 3 of Resolution No. 03-671 (which Resolution had been previously amended and supplemented by Resolution No. 04-534), is hereby amended to read as follows:

SECTION 1. That Section 3 of Resolution No. 03-671 is hereby amended to read as follows:

SECTION 3. That the City share of the cost of said improvements shall be paid by the issuance of General Obligation bonds by the City of Wichita at large. The total cost is estimated not to exceed \$27,798,214 plus administrative costs and plus cost of interest on borrowed money and other issuance costs. The cost of such improvements, in part, shall be paid by Federal Grants administered by the Kansas Department of Transportation in an amount up to \$2,798,214, and shall be funded, in part, by Special Obligation STAR Bonds under authority of K.S.A. 12-1770, *et. seq.*, in an amount not to exceed \$6,000,000, plus administrative costs and plus the costs of interest on borrowed money and other issuance costs. To the extent the cost of such improvements are not paid by STAR Bonds, the City of Wichita, Kansas is authorized to issue General Obligation bonds to pay such costs under authority of K.S.A. 12-689 up to a maximum amount of \$25,000,000, plus administrative

Section 4. The prior versions of Section 1 and Section 2 of Resolution No. 03-367 and Section 1 of Resolution No. 05-189 are hereby repealed and replaced as hereinabove indicated. The prior version of Section 2 of Resolution No. 02-402 is hereby amended and supplemented as hereinabove indicated. That, except as amended or supplemented hereby, Resolution No. 02-402, Resolution No. 03-671, Resolution No. 04-534, Resolution No 05-189, and Resolution No. 06-367, are hereby ratified and confirmed and shall continue to be in full force and effect.

Section 5. That this resolution shall take effect and be in force from and after its adoption and publication once in the official City newspaper.

ADOPTED AND APPROVED by the governing body of the City of Wichita, Kansas, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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CARL BREWER, MAYOR

ATTEST:

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KAREN SUBLETT, CITY CLERK  
(SEAL)

Approved as to form:

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GARY E. REBENSTORF, DIRECTOR OF LAW

City of Wichita  
City Council Meeting  
November 24, 2009

**TO:** Mayor and City Council Members

**SUBJECT:** Settlement of *Isely v. City of Wichita*

**INITIATED BY:** Law Department

**AGENDA:** Consent

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**Recommendation:** Approve the terms of the proposed settlement and payment from the Tort sub-fund, together with any necessary budget adjustments.

**Background:** This case is an inverse condemnation case brought by a group of landowners over the City's construction of turn lanes, sidewalk, utilities and other infrastructure in an approximately 7,820 square foot easement area on a tract at the southeast corner of Central and Hillside (the "Loshbaugh Tract"). Plaintiffs have offered to settle the case for a payment of \$80,000, which would include damages and interest, and plaintiffs would waive their claim for attorney fees. In addition, plaintiffs would ratify and confirm the easement, and extend it for so long as the City needs it for traffic purposes. Plaintiffs would retain their reverter in the event the City ever abandoned the traffic use, but in such a case, would allow the City to continue to maintain the then-existing sidewalk and utility infrastructure in the easement area. The plaintiffs would also retain the right to seek additional compensation if the City ever took additional area. These are rights typically retained by grantors of easements.

**Analysis:** Engineering and Planning staff has reviewed the proposal, and believe that the City will still need this easement for traffic purposes after 2058. The City's Real Estate Administrator has also reviewed the proposal and confirmed that the amount of the payment is a reasonable for the easement and accrued interest.

**Financial Considerations:** Ordinarily, condemnation related costs are charged to the appropriate capital project. Since this matter has been resolved years after the completion of the project, funding from the Tort sub-fund is recommended. Based on current projections, the year-end total of claims paid (including this \$80,000 claim) are expected to be within budgeted amounts; however, a contingency for adverse claims experience is also available if needed.

**Goal Impact:** Internal Perspective and Efficient Infrastructure.

**Legal Considerations:** The proposed settlement represents a reasonable resolution of the pending litigation. The Law Department will review and approve a form of Journal Entry to document the settlement and will prepare a suitable instrument for the plaintiffs' ratification and extension of the easement.

**Recommendations/Actions:** Approve the terms of the settlement and payment from the Tort sub-fund, together with any necessary budget adjustments.

**Second Reading Ordinances for November 17, 2009 (first read on November 10, 2009)**

Lincoln Street Bridge at Armour. (District II)

ORDINANCE NO. 48-554

An Ordinance amending Ordinance No. 47-891 of the city of Wichita, Kansas declaring the Lincoln bridge at Armour (472-84703) to be a main trafficway within the city of Wichita, Kansas; declaring the necessity of and authorizing certain improvements to said main trafficway; and setting forth the nature of said improvements, the estimated costs thereof, and the manner of payment of the same.

ZON2009-00026 – City zone change from SF-5 Single-family residential (“SF-5”) to LC Limited Commercial (“LC”) with a Protective Overlay (“PO”); generally located east of Seneca Street on the south side of 53<sup>rd</sup> Street North. (District VI)

ORDINANCE NO. 48-555

An ordinance changing the zoning classifications or districts of certain lands located in the city of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by section 28.04.010, as amended.

Abatement of Dangerous and Unsafe Structures. (Districts I, III, and VI)

ORDINANCE NO. 48-556

An ordinance making a special assessment to pay for the removal of certain structures, being dangerous and unsafe buildings which have been declared a nuisance (Building Emergency Board-Up) under the provision of sections 18.16.010 to 18.16.090 of the code of the city of Wichita, Kansas.

ORDINANCE NO. 48-557

An ordinance making a special assessment to pay for the removal of certain structures, being dangerous and unsafe buildings which have been declared a nuisance (Building Condemnation-Demolition ) under the revision of sections 18.16.010 to 18.16.090 of the code of the city of Wichita, Kansas.

Grant Award for Clean Diesel Fleet Equipment.

ORDINANCE NO. 48-558

An ordinance determining the necessity for acquiring fleet vehicles and equipment, and providing that the cost of said acquisition shall be paid by the city of Wichita, Kansas, at large through the issuance of general obligation bonds of the city of Wichita, Kansas, under the city’s home rule authority as set out in article 12, section 5, of the constitution of the State of Kansas.